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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BASS AVIATION, INC.,

Petitioner,

v.

MARGARITA HERNANDEZ, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

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QUESTION PRESENTED FOR REVIEW

Whether the sale and lease of aircraft in Alabama to Florida residents by a Mississippi corporation based in Alabama is a constitutionally cognizable contact of that corporation with Florida permitting the exercise of specific jurisdiction by Florida over the corporation with respect to a cause of action which arose out of an aircraft accident in Haiti, where the alleged negligence of the corporation occurred, if at all, in Alabama, and where the particular aircraft involved had been leased by the corporation in Alabama to a Florida resident and was flown by the Florida resident from Florida to Haiti.

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Petitioner Bass Aviation, Inc. (hereinafter Bass)[1] prays

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[1]The parties to the proceeding before the Fourth District Court of Appeal of the State of Florida were: Margarita Hernandez, as Personal Representative of the Estate of Rafael Hernandez, Jr., deceased; Margarita Hernandez individually; Stanley Hernandez; Ahiza Hernandez; Gates Learjet Corp.; and Linda Moyer, as Personal Representative of the Estate of Glenn Charles Moyer, deceased (appellants); and Bass Aviation, Inc. and The Insurance Company of the State of Pennsylvania (appellees).

Although in the style of the case before the Fourth District Court of Appeal, Titanic Aircraft Sales and Service, Ltd. appears as appellee, it was not a party to the proceeding before the Fourth District Court

that a writ of certiorari issue to review the decision of the Fourth District Court of Appeal of Florida.

OPINIONS BELOW

The order of the trial court, the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, dismissing the complaint against petitioner Bass Aviation, Inc. on grounds of lack of *in personam* jurisdiction, appears in the appendix. (App. 8a).

The opinion of the District Court of Appeal of the State of Florida, Fourth District, reversing the order of the trial court, Chief Judge Anstead dissenting, appears at App. 1a-7a.

The order of the Supreme Court of Florida declining discretionary jurisdiction to review the decision of the Court of Appeal, Justice McDonald dissenting, appears at App. 10a.

None of the above orders and opinions are officially or unofficially reported.

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of Appeal.

Bass Aviation, Inc. and the Insurance Company of the State of Pennsylvania invoked the certiorari jurisdiction of the Supreme Court of Florida.

Pursuant to Rule 28.1 of the Rules of the Supreme Court, Petitioner states that, at this time, it has no parent, subsidiary or affiliate companies. At the time the cause of action arose, Bass was a subsidiary of Alabama Aircraft, Inc., an Alabama corporation based in Fairhope, Alabama. At that time, Bass was also the parent company of Air Medic, Inc., an Alabama corporation also based in Fairhope, Alabama.

JURISDICTION

The District Court of Appeal of the State of Florida, Fourth District, in an opinion filed July 11, 1984, reversed an order entered by the trial court dismissing petitioner on grounds of lack of *in personam* jurisdiction and insufficient minimum contacts by petitioner with the State of Florida. (App. 1a-7a). On July 26, 1984, Bass moved for rehearing which the District Court of Appeal denied on August 21, 1984. (App. 9a). On September 20, 1984, Bass timely filed a notice, invoking the discretionary *certiorari* jurisdiction of the Supreme Court of Florida (App. 46a-47a), and, on October 1, 1984, Bass timely served its brief on jurisdiction. On January 4, 1985, the Supreme Court of Florida denied Bass' Petition for Review stating that no motion for rehearing would be entertained by the court. (App. 10a).

The decision of the Court of Appeal is final on the federal issue involved herein. See *Calder* v. *Jones*, 104 S. Ct. 1482, 1486 n.8 (1984).

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1257(3) (1982).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution and §48.193 of the Florida Statutes are the constitutional and statutory provisions involved in this case. They are included in the appendix at 49a-51a.

STATEMENT OF THE CASE

The facts of the case and the contacts upon which the District Court of Appeal relied in exercising *in personam* jurisdiction over Bass are set forth in the opinion of the District Court of Appeal. (App. 1a-7a).

On February 29, 1980, Petitioner Bass entered into a lease of a Lear Jet aircraft with Titanic Aircraft Sales and Services, Ltd. (hereinafter Titanic) in Fairhope, Alabama. Under the provisions of the lease, the parties agreed that Alabama law was to govern. (App. 48a).

Titanic was a Bahamian corporation which conducted business in Florida. The aircraft which was the subject of the lease was delivered by Bass in Alabama to Glenn Moyer, an agent of Titanic and a resident of Florida. At the time the lease was entered into, Mr. Moyer told Bass that he would be flying the aircraft to Florida at some point.

After flying the aircraft from Alabama to the midwest and northeast United States, Mr. Moyer flew the aircraft to Florida. On March 3, 1980, the leased Lear Jet aircraft departed Miami en route to Haiti. Mr. Moyer was the pilot; respondents' decedent, Rafael Hernandez, also a Florida resident, was aboard the aircraft. While making a landing in Haiti, the plane crashed causing the death of Mr. Hernandez and Mr. Moyer.

Plaintiff alleged in his complaint against Bass and other defendants that Bass had "negligently and carelessly failed to properly maintain, equip and repair the Lear Jet N211MB, and further negligently and carelessly failed to warn users of the aircraft such as RAFAEL HERNANDEZ of the dangerous and unairworthy condition of the Lear Jet N211MB", and that this negligence was a proximate cause of death of Mr. Hernandez. (App. 16a-17a).

The cause of action did not arise in Florida but in Haiti, where the accident occurred. The cause of action did not arise out of or relate to any conduct of Bass in Florida. The subject aircraft was maintained by Bass in Alabama, not Florida, and leased by Bass in Alabama, not Florida.

Bass is a Mississippi corporation whose sole place of business is in Fairhope, Alabama. Bass is principally engaged in the business of selling aircraft and leasing aircraft for use in charter operations. Bass has never been qualified to do business in Florida, has never maintained an office in Florida, does not conduct its business in Florida and does not have officers, agents, or employees[2] located in Florida. Fairhope, Alabama is near the territorial border of Florida and many of Bass' customers were Florida residents. However, the sales and lease transactions in which Bass engages take place in Alabama. Except on one occasion, all aircraft for sale and lease were delivered by Bass in Alabama.

The contacts which the District Court of Appeal found existed between Bass and the state of Florida were the following: From 1977 through 1980, Bass occasionally advertised aircraft for sale in a publication called "The A/C Flyer," a nationally distributed publication. Bass placed the advertisements through the publication's office in Florida. Bass had previously leased in Alabama other aircraft to Titanic and to other residents of Florida. On one occasion, a leased aircraft was delivered in Florida by Bass. In addition to selling and leasing aircraft, Bass also lease/charters aircraft and permits lessees and prospective purchasers to use its nationwide FAA Part 135 certificate, a certificate necessary when an aircraft is to be used for charter. International Jet Charter, a company based in Fort Lauderdale, Florida was one of the users of Bass' Part 135 certificate. None of the aforementioned "contacts" were related to the crash of the Lear Jet aircraft in Haiti out of which the cause of action arose.

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[2]One employee of Bass is a Florida resident and commutes to work in Fairhope, Alabama.

PROCEEDINGS IN THE TRIAL COURT

On February 26, 1982, plaintiff-respondent Margarita Hernandez, as personal representative of the estate of Rafael Hernandez, filed a complaint in the 11th Judicial Circuit Court for Dade County seeking damages for the alleged wrongful death of her husband in the crash of the Bass-leased Lear Jet aircraft in Haiti. Named as defendants, *inter alia*, were Linda Moyer, the personal representative of the estate of the deceased pilot Glenn Moyer, Gates Lear Jet Corp. and Bass.

The allegations of jurisdiction over petitioner Bass were as follows:

> 13. At all times material hereto, the Defendant, BASS, was an owner, lessee and operator of Lear Jet N211MB. BASS is in the business of leasing various aircraft to persons and organizations which operate the aircraft throughout the United States including the State of Florida. Upon information and belief, BASS leased Lear Jet N211MB to persons and organizations residing and operating in the State of Florida, and leased and operated other aircraft in the State of Florida. Prior to March 3, 1980, BASS delivered Lear Jet N211MB into the custody of GLENN CHARLES MOYER with the knowledge that he would fly N211MB to various places within and without the United States of America including the State of Florida.

(App. 14a-15a).

Bass specially appeared and timely moved to dismiss the action *inter alia* on grounds that the court lacked jurisdiction over the person of Bass. (App. 20a-22a).

In a companion action, Linda Moyer, as personal representative of the estate of the pilot Glenn Moyer, had filed an

earlier complaint in the 17th Judicial Circuit for Broward County, Florida. Named as defendants were Gates Lear Jet Corp., Bass and Margarita Hernandez, as personal representative of the estate of Rafael Hernandez.

The Hernandez action was thereafter transferred from Dade County to Broward County.

After discovery on the issue of *in personam* jurisdiction, the court (The Honorable James H. Reasbeck) entered its ruling in the Hernandez case, dismissing Bass from the action on jurisdictional grounds, holding:

> [T]he Court finds that there are not sufficient minimum contacts by BASS AVIATION, INC. with the State of Florida, therefore the Court lacks jurisdiction over the defendant BASS AVIATION, INC. and the claim against them be and the same is hereby dismissed.

(App. 82a).

The Circuit Court did not rule on jurisdiction in the Moyer case and deferred any such ruling pending appeal of the Hernandez order of dismissal. Respondent Hernandez appealed the ruling to the Florida Fourth District Court of Appeal. Under Florida practice, Moyer and Gates Lear Jet Corp., as interested parties, were permitted to join and did join in the appeal.

THE FOURTH DISTRICT COURT OF APPEAL PROCEEDING

On appeal, Hernandez, Gates Lear Jet and Moyer argued that Section 48.193 of the Florida Statutes (Florida's long-arm statute) (App. 49a-51a), and the constitutional standard for weighing minimum contacts under *World-Wide Volkswagen v. Woodson*, 444 U.S. 286 (1980) were satisfied. Moyer argued that Bass' prior dealings with Florida resi-

dents in Alabama plus its nationwide advertising of aircraft for sale through a publication in Florida constituted business activities by Bass in Florida. Argued Moyer:

> By dealing with a Florida resident (MOYER) and by having foreknowledge that the aircraft was bound for Florida, coupled with the fact that the crash actually occurred on a flight from Miami, Florida, BASS AVIATION'S Florida activities were also directly related to the crash which is the subject of this suit. (App. 27a).

The District Court of Appeal did not specifically rule on whether §48.193 of the Florida Statutes was satisfied but held that the constitutional test for *in personam* jurisdiction established by the Court and followed by the courts of Florida was satisfied. (App. 2a). Stated the court:

> [W]e conclude that the allegations of the plaintiffs' complaint and their subsequent proof were sufficient to meet the following test expressed by the United States Supreme Court and followed by the courts of Florida in *Lacy v. Force V Corp.*, 403 So.2d 1050, 1054 (Fla. 1st DCA 1981):
>
> > Unquestionably the single most important factor to be considered is whether "the defendant's conduct and connnection with the forum . . . are such that he should reasonably anticipate being haled into court there . . ." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 297, 100 S.Ct. at 567, 62 L.Ed.2d at 501. It is essential that this circumstance be considered from the perspective of the defendant—not from that of the plaintiff. *See Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 2580, 43 L.Ed.2d 683 (1977). The reasonable foreseeability factor is frequently applied to force a nonresident defendant to answer a suit within the forum if it "purposefully

> avails itself of the privilege of conducting activities within the forum . . . ." *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958).

(App. 2a-3a).

The District Court of Appeal held that Bass' leasing of the aircraft to a Florida resident with knowledge that the aircraft would be used in Florida constituted a sufficient contact between Bass and the forum. The court did not specifically rule whether this "contact" with Florida gave rise to or related to the cause of action.

Chief Judge Anstead dissented from the opinion and decision of the court.[3]

PROCEEDINGS BEFORE THE FLORIDA SUPREME COURT

Bass thereafter sought discretionary review of the decision of the Fourth District Court of Appeal. (App. 46a-47a). The Supreme Court of Florida declined to accept jurisdiction. (App. 10a).

REASON FOR GRANTING THE WRIT

The District Court of Appeal has decided an important question of federal law which conflicts with decisions of the Court. Sup. Ct. R. 17.1(c).

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[3]The parties' assignment of error (App. 23a-45a) and the District Court of Appeal's finding that the allegations of the plaintiff's complaint and its proof met the constitutional test set forth by the Court establish that a federal question was timely and properly raised and passed upon by the District Court of Appeal. Rule 21.1(h) of the Rules of the Supreme Court.

A. The Doctrine of Specific Jurisdiction

The principle of specific jurisdiction[4] has evolved from the Court's decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). In *International Shoe*, the Court stated:

> [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

326 U.S. at 319.

While the Court has not specified what sort of tie or connection between a cause of action and a defendant's contacts with a forum is constitutionally necessary for the exercise of specific jurisdiction,[5] the Court has required some purposeful activity in the forum state which in some way is connected with the cause of action.

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[4]"It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum, the State is exercising 'specific jurisdiction' over the defendant." *Helicopteros Nacionales de Columbia, S. A. v. Hall*, 104 S. Ct. 1868, 1872 n.8 (1984).

[5]In *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 104 S. Ct. 1868, 1873 n.10 (1984), the Court declined to examine whether a distinction should be drawn between "controversies that 'relate to' a defendant's contacts with a forum and those that 'arise out of' such contacts."

In *Hanson v. Denckla*, 357 U.S. 235 (1958), the Court stated:

> [I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

357 U.S. at 253.

> The cause of action in this case is not one that arises out of an act done or transaction consummated in the forum state.

357 U.S. at 251.

> [T]his suit cannot be said to be one to enforce an obligation that arose from a privilege the defendant exercised in Florida.

357 U.S. at 252.

Under the decisions of the Court there must be a constitutionally cognizable tie between the defendant, the forum and the litigation before specific jurisdiction over a defendant can be exercised by the forum state. *Shaffer v. Heitner*, 433 U.S. 186 (1977).

A defendant's "conduct and connection with the forum" was addressed in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Although the cause of action arose in the forum state in *World-Wide Volkswagen*, the Court did not reach nor need to reach the issue whether the defendant's connection with the forum related to the cause of action because the Court found there was no constitutionally cognizable contact of the defendant with the forum.

In *World-Wide Volkswagen*, the issue was whether an independent Volkswagen distributor and retailer based in

New York, who had sold an automobile in New York which found its way to Oklahoma, had sufficient contacts and connection with Oklahoma so as to constitutionally subject it to the jurisdiction of Oklahoma courts.

If, in *World-Wide Volkswagen*, the defendants' contacts with the forum were pervasive, continuous and systematic, the defendant would be subject to the general jurisdiction of the forum state. If the contacts were not so pervasive but the plaintiff's cause of action arose out of or related to the defendant's contacts with the forum state, the state could constitutionally exercise specific jurisdiction over the defendant. *See, Helicopteros Nacionales de Colombia, S. A. v. Hall*, 104 S.Ct. 1868 (1984).

B. The Constitutional Issue in the Case

The constitutional issue presented by the case at bar is whether Bass had constitutionally cognizable contacts with the forum which either gave rise to or were related to the cause of action to permit the Florida court to exercise specific jurisdiction over Bass.[6]

C. The Facts Related to the Issue

The facts relied upon by the District Court of Appeal of Florida are not in dispute. Bass is based in Alabama near the Florida territorial border and is in the business of selling

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[6]The issue is not a state issue: whether the facts of this particular case satisfied the connexity requirements of Section 48.193 of the Florida Statutes. The Court of Appeal did not specifically rule whether these contacts met §48.193 or not. The dissenting judge was of the opinion that §48.193 was not satisfied.

The issue is, notwithstanding whether §48.193 was met or not, whether the contacts found by the District Court of Appeal were constitutionally cognizable contacts of Bass with Florida and were sufficiently connected with the cause of action to permit the constitutional exercise of specific jurisdiction over Bass by the Florida courts.

and leasing aircraft in Alabama. Bass does not do business in Florida but does do business in Alabama with Florida residents.

Bass leased the aircraft in Alabama to Titanic, a company operating in Florida. This lease provided that the law of Alabama was to govern. Bass knew at the time of the lease that the aircraft would be operated in Florida by the lessee. The aircraft did come to Florida and left Florida for Haiti on a trip which ended in the crash of the aircraft in Haiti.

The cause of action alleged against Bass was based upon negligent maintenance of the aircraft and failure to warn, both of which events, if they occurred at all, occurred in Alabama. The cause of action arose in Haiti, the place of the accident.

D. Contacts Between Bass and the Forum

The District Court of Appeal found cognizable contacts between Bass and the Florida forum in two ways: (1) Bass' dealings with Florida residents and (2) Bass' knowledge that the aircraft leased in Alabama would be taken to Florida by a Florida resident. Reliance on these "contacts" for the exercise of specific jurisdiction is contrary to the teachings of the Court in *World-Wide Volkswagen*.

1. Bass' Dealings with Florida Residents

In *World-Wide Volkswagen*, the Court found that a defendant's connection with the forum was not established simply because the vehicle sold in New York found its way to Oklahoma. The Court rejected the notion that jurisdiction attaches to the chattel, stating, "Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel." 444 U.S. at 296.

The case at bar represents a variance of that rejected notion. The District Court of Appeal appears to hold that by leasing an aircraft in Alabama to a Florida resident, the lessor has appointed the lessee as his agent for service of process in the lessee's state.

As the Court stated in *Hanson v. Denckla:*

> unilateral activity of those who claim some relationship with a non-resident defendant cannot satisfy the requirement of contact with the forum State . . . [I]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State.

Hanson v. *Denckla*, 357 U.S. at 253. *Accord, World-Wide Volkswagen Corp.*, 444 U.S. at 298.

The fact that Florida residents come to Alabama to deal with Bass is the kind of "unilateral activity of those who claim some relationship with a non-resident defendant" which the Court held could not satisfy the requirement of contact with the forum state.

The necessity that there be contact with the forum state by the defendant stems in part from the territorial limitations imposed by the United States Constitution on the sovereign power of states to adjudicate cases brought against non-resident defendants. *World-Wide Volkswagen Corp.*, 444 U.S. at 293. Given the territorial limitations of a state's sovereign powers over a non-resident defendant, it is constitutionally essential for the exercise of specific jurisdiction that the defendant purposefully conduct activities in the state which give rise to or relate to the cause of the action. "The Due Process Clause, by ensuring the 'orderly administration of the laws,' . . . gives a degree of predictability to the legal system that allows potential defendants

to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." 444 U.S. at 297. (*quoting International Shoe Co. v. Washington*, 326 U.S. at 319)

Bass confined its transactions to Alabama and avoided transactions in Florida and in this case Bass did nothing in Florida which had anything to do with the cause of action.

Specific jurisdiction in this case was based solely on the fact that Bass dealt with Florida residents in Alabama and that Bass leased the subject aircraft in Alabama to a Florida resident.

Contrary to the Court's holdings in *World-Wide Volkswagen, International Shoe* and *Hanson*, specific jurisdiction in this case was based not on the defendant's contacts with the forum and the litigation but was based solely on Bass' relationship with Florida residents.

If the District Court of Appeal's holding should prevail, jurisdiction over a defendant would be governed by the plaintiff's contacts with the forum and the forum state's interest in adjudicating the rights of its citizens. *See*, Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 S. CT. REV. 77, 105-107 (1980).

Despite some considerations of convenience to the plaintiff, the Court has inalterably adhered to the constitutional principle that it is the defendant's contacts with the forum, not the plaintiff's, which control *in personam* jurisdiction over the defendant, and when specific jurisdiction is at issue, the only constitutionally cognizable contacts are those contacts of the defendant with the forum (and not with its residents) which give rise to or relate to the cause of action. There were no cognizable contacts between Bass and

the forum connected with the cause of action. Bass' dealings with Florida residents in Alabama are not contacts with Florida.

2. The Stream of Commerce Doctrine

The District Court of Appeal found as a cognizable contact of Bass with Florida the fact that Bass had knowledge that the aircraft leased in Alabama to a Florida resident would be operated in Florida. This finding was a misapplication of the "stream of commerce" doctrine described in *World-Wide Volkswagen*.

The Court, in *World-Wide Volkswagen*, held that if the defendant purposefully avails itself of the privilege of conducting activities within the forum state indirectly through agents or distributors, such activities will be deemed constitutionally cognizable contacts by the defendant with the forum.

> Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.

444 U.S. at 297.

This "stream of commerce" basis for exercising specific jurisdiction was not present in the case at bar. Bass did not invoke the privilege or benefit of conducting business in Florida. Bass did not lease or sell aircraft through others in Florida or attempt to develop a market in Florida. Lessees or purchasers who wished to deal with Bass had to come to Alabama where the transaction was consummated. Not

only did Bass not invoke the privilege or benefit of Florida laws, Bass carefully avoided any transactions or business in Florida.

In his dissent in *World-Wide Volkswagen*, Mr. Justice Brennan stated:

> "The Court [in *World-Wide Volkswagen*] accepts that a State may exercise jurisdiction over a distributor which 'serves' that State 'indirectly' by 'deliver[ing] its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state. . . . It is difficult to see why the Constitution should distinguish between a case involving goods which reach a distant State through a chain of distribution and a case involving goods which reach the same State because a consumer, using them as the dealer knew the customer would, took them there. In each case the seller purposefully injects the goods into the stream of commerce and these goods predictably are used in the forum State.

444 U.S. 306-307 (footnotes and citations omitted)

Noted Mr. Justice Brennan:

> For example, I cannot understand the constitutional distinction between selling an item in New Jersey and selling an item in New York expecting it to be used in New Jersey.

444 U.S. 307 n. 11.

The distinction which the Court upheld over the dissent of Mr. Justice Brennan is rooted in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945) and *Hanson* v. *Denckla*, 357 U.S. 235 (1958).

For the constitutional exercise of specific jurisdiction under the stream of commerce doctrine, there must be some act by the defendant or others acting for it by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.

Such an act by Bass was absent in this case. Dealings with Florida residents in Alabama are not purposeful activities in Florida. The "stream of commerce" doctrine described in *World-Wide Volkswagen* is based upon the purposeful marketing by sellers of products in the state, through agents and independent wholesalers and jobbers, and the placing of these products into the "stream of commerce" for sale in the state. Bass deals solely with "consumers" in Alabama and to which state the consumer takes the product does not constitute a contact of Bass with that state.

Although in *World-Wide Volkswagen*, dissenting Justices held views to the contrary, the Court recognized that it is the defendant's contact with the forum connected with the cause of action which is constitutionally required, and that there is a constitutional distinction between a seller who, through a chain of distribution, sells his product in the forum state and a seller who sells (or leases) a product in a sister state to a consumer with knowledge that the consumer will take it to the forum state. *World-Wide Volkswagen Corp.*, 444 U.S. at 306-07.

The leasing of an aircraft in Alabama to a Florida resident with knowledge that the Florida resident will take it to Florida is not a cognizable constitutional contact of Bass with Florida under the stream of commerce doctrine, or otherwise.

E. The Connection Between the Defendant's Forum Contacts and the Cause of Action.

There was no act in Florida by Bass which had any connection with the cause of action which arose in Haiti. In

specific jurisdiction cases, the fact that the cause of action arose in the forum state has generally been given great weight. *See, Keeton v. Hustler Magazine, Inc.*, 104 S.Ct. 1473 (1984); *Calder v. Jones*, 104 S.Ct. 1482 (1984).

In this case, the cause of action arose not in Florida, but in Haiti. In the formulation of the stream of commerce doctrine by the Court, the fact that the source of the injury was in the forum state appears to be important to the application of the doctrine. Stated the Court: "it is not unreasonable to subject it [the defendant] to suit in one of those States if its allegely defective merchandise has there been the source of injury to its owner or to others." *World-Wide Volkswagen*, 444 U.S. at 297. In cases where *in personam* jurisdiction was found by application of the stream of commerce doctrine, the cause of action arose in the forum state, *see, e.g., DeMelo v. Toche Marine, Inc.*, 711 F.2d 1260 (5th Cir. 1983), *McKown v. Criser's Sales and Service*, 48 Md.App. 739, 430 A.2d 91 (1981), *cert. denied*, (1981), or the sale of the product took place in the forum state. *See State ex rel. Hydraulic Servocontrols v. Dale*, 294 Or. 381, 657 P.2d 211 (1982); *Oswalt v. Scripto, Inc.*, 616 F.2d 191 (5th Cir. 1980).

Bass' "contact" with the forum had no connection with the cause of action. The cause of action, the lease of the aircraft and the claimed negligence did not occur in Florida.

F. The Need to Review this Case.

Issues concerning the constitutional limits of *in personam* jurisdiction over a non-resident defendant continue to occupy both federal and state courts. The constitutional parameters of specific jurisdiction should be clear and well-defined so that such issues can be settled early and finally in the litigation. Defendants who contest jurisdiction in many cases must await a final determination on the merits before a final review of jurisdiction. Plaintiffs are similarly preju-

diced if forced to a trial on the merits in a forum which is ultimately determined to lack jurisdiction.

The constitutional parameters for the exercise of specific jurisdiction remain unclear.

The "stream of commerce" doctrine articulated in *World-Wide Volkswagen*, as applied in the courts, has uncertain application. *See*, Lilly, *Jurisdiction Over Domestic and Alien Defendants*, 69 VA.L.REV. 85, 102-107 (1983); Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction*, 1980 SUP. CT. REV. 77, 91-96 (1980).

The issue in the case at bar involves one aspect of the uncertain constitutional parameters for the exercise of specific jurisdiction, is of great importance and should be reviewed by the Court.

CONCLUSION

For the foregoing reasons, petitioner urges that the petition for a writ of certiorari be granted.

THOMAS J. WHALEN
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Dated: April 4, 1985

CERTIFICATE OF SERVICE

I, Thomas J. Whalen, being over the age of 18 years and a member of the law firm of Condon & Forsyth, hereby certify that I have, this fourth day of April, 1985, served three copies of the foregoing petition for a writ of certiorari to the District Court of Appeal of the State of Florida, Fourth District upon the following parties, by mailing such copies to their attorneys of record in sealed envelopes, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C.:

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APPENDIX

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IN THE
DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

JULY TERM 1984

CASE NO. 83-366

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, JR., deceased; MARGARITA HERNANDEZ; individually; STANLEY HERNANDEZ; AHIZA HERNANDEZ; GATES LEARJET CORP., a foreign corporation; and LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, deceased,

Appellants,

V.

BASS AVIATION, INC., a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees.

Opinion filed July 11, 1984

Appeal from the Circuit Court for Broward County;
James M. Reasbeck, Judge.

GLICKSTEIN, J.

This is an appeal from an order which dismissed Bass Aviation from the action because of lack of in personam jurisdiction and insufficient minimum contacts by that defendant with the State of Florida. We reverse and remand.

We held in *Cosmopolitan Health Spa, Inc. v. Health Industries, Inc.*, 362 So.2d 367, 368 (Fla. 4th DCA 1978):

> In order to allow the assertion of *in personam* jurisdiction over a defendant outside the territorial reach of the courts of this state, a burden is imposed on the plaintiff to plead sufficient material facts to establish a basis for the exercise of such jurisdiction. If such jurisdiction over the person of the defendant is properly challenged by affidavit, the plaintiff must sustain its assertions by affidavit or other proof and may not rely on a mere reiteration of the allegations contained in the complaint. *Georgia Savings and Loan Service Corp. v. Delwood Estates, Inc.*, 315 So.2d 237 (Fla. 1st DCA 1975). See also *Dublin Company v. Peninsular Supply Co.*, 309 So.2d 207 (Fla. 4th DCA 1975). (Emphasis in original.)

Applying the foregoing requirements to the present case, we conclude that the allegations of the plaintiffs' complaint and their subsequent proof were sufficient to meet the following test expressed by the United States Supreme Court and followed by the courts of Florida in *Lacy v. Force V Corp.*, 403 So.2d 1050, 1054 (Fla. 1st DCA 1981):

> Unquestionably the single most important factor to be considered is whether "the defendant's conduct and connection with the forum . . . are such that he should reasonably anticipate being haled into court there . . ." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at

> 297, 100 S.Ct. at 567, 62 L.Ed.2d at 501. It is essential that this circumstance be considered from the perspective of the defendant—not from that of the plaintiff. See *Shaffer v. Heitner*, 433 U.S. 186, 204, 97 S.Ct. 2569, 2580, 43 L.Ed.2d 683 (1977). The reasonable foreseeability factor is frequently applied to force a nonresident defendant to answer a suit within the forum if it "purposefully avails itself of the privilege of conducting activities within the forum . . . " *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958).

Paragraph 13 of the complaint alleged:

> (13) Upon information and belief, Bass leased Learjet N211MB to persons and organizations residing and operating in the state of Florida, and leased and operated other aircraft in the state of Florida. Prior to March 3, 1980, Bass delivered Learjet N211MB into the custody of Glenn Charles Moyer with the knowledge that he would fly N211MB to various places within and without the United States of America including the state of Florida.

Bass Aviation moved to dismiss the complaint for lack of jurisdiction over its person and attached the affidavit of its president, attesting to the facts that Bass was a Mississippi corporation whose principal place of business is in Fairhope, Alabama;[1] that it neither has nor had officers, agents, employees, jobbers, wholesalers or distributors in Florida; that it did not nor had not placed advertising in any publications in Florida nor sent direct mail nor broadcast advertising therein; that it does or did not use Florida banks as lenders; that it did not lease the aircraft in question to

---

[1]Fairhope is on the east side of Mobile Bay, west of Pensacola, Florida.

anyone in Florida, directly or indirectly; that it did not operate or maintain the subject aircraft here; that it had none of its products used or consumed here; that the lease for the aircraft was executed in Fairhope; that the aircraft left Fairhope for Denver; and that the pilot only mentioned Denver, Chicago and the northeast United States.

The affidavit did not address most of the allegations of paragraph 13 of the complaint but conflicted with the allegation therein that Bass knew the aircraft was going to be flown to Florida and without the U.S. The complaint had also alleged the alleged unairworthy aircraft flew from Miami to Haiti where it crashed in the mountains on March 3, 1980 killing the occupants.

The deposition of Bass' president revealed two discrepancies with his affidavit; namely, that the pilot had told him he would be flying from the northeast to Florida and that Bass had advertised in 1979 and 1980 in Florida pursuant to a written agreement with A/C Flyer, whose office was then, according to the printed agreement, in Miami. The deposition further reflected facts relevant to the jurisdictional inquiry. The subject aircraft was leased for seven days on February 29, 1980, by Bass to Titanic Aircraft Sales and Service, Ltd., a Bahamian corporation operating in Fort Lauderdale. Bass had previously entered into similar leases with the same party; and Mr. Bass testified as to another lease for other aircraft with another party operating in Fort Lauderdale. A long-term lease with this other party—for ten years commencing in late 1979—reflects delivery to be in Fort Lauderdale; and the record reflects correspondence and invoices directed to Fort Lauderdale.

The statement of facts in the main brief of appellants, Hernandez, alleges that the certificate held by Bass which was required by Part 135 of the Federal Aviation Regula-

tions was used by other entities who were renting or leasing aircraft from Bass, including a party in Fort Lauderdale. Appellees' brief did not dispute this fact.

In our opinion the trial court erred in not concluding that Bass should have reasonably anticipated being haled into court.

LETTS, J., concurs.
ANSTEAD, C. J., dissents with opinion.

ANSTEAD, C. J., dissenting:

Bass Aviation, Inc., a Mississippi corporation with its main office in Alabama, the lessor of an aircraft, was sued in negligence as the result of the crash of the aircraft in Haiti. The aircraft was leased in Alabama to a Bahamian corporation that did business in a number of states, including Florida. Under these facts I do not believe we can say the trial court erred in ruling that Bass was not amenable to service of process under the provisions of Section 48.193, Florida Statutes (1983), which provides:

> 48.193 Acts subjecting persons to jurisdiction of courts of state.—
>
> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:
>
> (a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.
>
> (b) Commits a tortious act within this state.

(c) Owns, uses, or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally

serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereinafter provided by law.

Subsections (1)(a) through (g) and (3) speak for themselves. Under the evidence, Bass' activities do not fall into any of these categories. I do not believe we can overturn the trial court's ruling on the basis of evidence of some prior advertising in Florida or the fact that some other aircraft leased by Bass were used in Florida.

IN THE
CIRCUIT COURT OF THE 17th JUDICIAL
CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

Case No: 82-13317 CP

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, *etc., et al.*,

Plaintiffs,

VS.

LINDA MOYER, *et al.*,

Defendants.

ORDER

THIS CAUSE came on for hearing on January 17, 1983, on the motion by BASS AVIATION, INC., to quash and/or abate and/or dismiss complaint, and the Court having heard argument of counsel, and being otherwise advised in the premises, it is hereby

ORDERED and ADJUDGED that the Court finds that there are not sufficient minimum contacts by BASS AVIATION, INC., with the State of Florida, therefore the Court lacks jurisdiction over the Defendant, BASS AVIATION, INC., and the claim against them be and the same is hereby dismissed.

DONE and ORDERED in Chambers, at Ft. Lauderdale, Broward County, Florida, this 19 day of January, 1983.

CIRCUIT COURT JUDGE

IN THE
DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

Case No. 83-366

MARGARITA HERNANDEZ, *etc., et al.*,

Appellant,

V.

BASS AVIATION, *etc., et al.*,

Appellee.

August 21, 1984

BY ORDER OF THE COURT:

ORDERED that the July 26, 1984 Motion for Rehearing filed by Appellee, Bass Aviation, is hereby denied.

SUPREME COURT OF FLORIDA

Friday, January 4, 1985

Case No. 65,908

District Court of Appeal,
4th District—No. 83-366

BASS AVIATION, INC., *et al.*,

Petitioners,

v.

MARGARITA HERNANDEZ, *et al.*,

Respondents.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

ADKINS, Acting C.J., OVERTON, EHRLICH and SHAW, J.J., concur
MCDONALD, J., dissents

Upon consideration of the Motion to Dismiss Petition for Review filed in the above cause by attorney for Respondent Linda Moyer, it is ordered that said Motion be and the same is hereby denied.

ADKINS, Acting C.J., OVERTON, MCDONALD, EHRLICH and SHAW, J.J., concur

Sid J. White
Clerk Supreme Court

by _____
Deputy Clerk

IN THE
CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

Case No. 82-3725

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, Deceased; MARGARITA HERNANDEZ, Individually; STANLEY HERNANDEZ and AHIZA HERNANDEZ,

Plaintiffs,

VS.

LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased; BASS AVIATION, INC., a Foreign Corporation, EXECUFLITE, INC., a Foreign Corporation, GATES LEAR JET CORPORATION, a Foreign Corporation, THE GENERAL ELECTRIC COMPANY, a Foreign Corporation, TITANIC AIRCRAFT SALES AND SERVICES, LTD., a Foreign Corporation, and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a Foreign Corporation,

Defendants.

COMPLAINT

The Plaintiffs, MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, Deceased; MARGARITA HERNANDEZ, Individually; STANLEY HERNANDEZ and AHIZA HERNANDEZ, sue the Defendants, LINDA MOYER, as

Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased; BASS AVIATION, INC., a Mississippi corporation (hereinafter referred to as "BASS"); EXECUFLITE, INC., an Ohio corporation, (Hereinafter referred to as "EXECUFLITE"); GATES LEAR JET CORPORATION, a Delaware corporation (hereinafter referred to as "LEAR"); THE GENERAL ELECTRIC COMPANY, a New York corporation, (hereinafter referred to as "GENERAL ELECTRIC"); TITANIC AIRCRAFT SALES CORPORATION, A Bahamian corporation; (hereinafter referred to as "TITANIC AIRCRAFT"); TITANIC AIRCRAFT SALES AND SERVICES, LTD., a Bahamian corporation, (hereinafter referred to as "TITANIC SALES"); and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a Pennsylvania corporation, (hereinafter referred to as "INSURANCE COMPANY"), and allege:

1. That this is an action for damages including wrongful death in excess of FIVE THOUSAND ($5,000.00) DOLLARS.

2. That the Plaintiff, MARGARITA HERNANDEZ, is the appointed Personal Representative of the Estate of RAFAEL HERNANDEZ, Deceased, with Letters of Administration having been issued and filed in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, Probate Division, Case No. 81-7419, and she is now acting as personal Representative of the Estate. MARGARITA HERNANDEZ sui juris, a resident of Dade County, Florida, and the widow of the Decedent RAFAEL HERNANDEZ.

3. That the Plaintiffs, STANLEY HERNANDEZ and AHIZA HERNANDEZ, are residents of Dade County,

Florida and are the minor children or adult dependent children of the Decedent RAFAEL HERNANDEZ.

4. That the Defendant, LINDA MOYER, is the appointed Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased, with Letters of Administration having been issued or filed in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida, Probate Division, Case No. 80-1660, and LINDA MOYER is now acting as Personal Representative of the Estate.

5. That the Defendant, BASS, is a corporation organized and existing under and by virtue of the laws of the State of Mississippi, with its principal place of business located in Fairhope, Alabama.

6. That the Defendant, EXECUFLITE, is a corporation organized and existing under and by virtue of the laws of the State of Ohio, with its principal place of business located in Cincinnati, Ohio.

7. That the Defendant, LEAR, is a corporation organized and existing under and by virtue of the laws of the State of Delaware, with its principal place of business located in Tucson, Arizona. LEAR is authorized to and does conduct, engage in and carry on regular business in the State of Florida.

8. The Defendant, GENERAL ELECTRIC, is a corporation organized and existing under and by virtue of the laws of the State of New York, with its principal place of business located in Hartford, Connecticut. GENERAL ELECTRIC is authorized to and does conduct, engage in and carry on regular business in the State of Florida.

9. The Defendant, TITANIC AIRCRAFT, is and at all times material hereto, was a corporation existing under and

by virtue of the laws of the Bahamas with its principal place of business in Nassau, Bahamas. Upon information and belief the officers and directors of TITANIC AIRCRAFT resided in the State of Florida and regularly conducted business in the State of Florida.

10. The Defendant, TITANIC SALES, is and at all times material hereto, was a corporation existing under and by virtue of the laws of the Bahamas with its principal place of business in Nassau, Bahamas. Upon information and belief the officers and directors of TITANIC SALES resided in the State of Florida and regularly conducted business in the State of Florida.

11. The Defendant, INSURANCE COMPANY, is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, with its principal place of business located in Philadelphia, Pennsylvania. The INSURANCE COMPANY is authorized to and does business in the State of Florida.

12. At all times material hereto, the Defendant, EXECUFLITE, was an owner, lessor and operator of a certain Gates Lear Jet Model No. 23, Registration No. N211MB, Serial No. 059. Upon information and belief, EXECUFLITE, leased Lear Jet N211MB and other aircraft at various times to persons and organizations throughout the United States including the State of Florida. Prior to March 3, 1980, EXECUFLITE delivered Lear Jet N211MB to Defendant, BASS, with the knowledge that BASS would operate it and allow it to be operated by others worldwide.

13. At all times material hereto, the Defendant, BASS, was an owner, lessee and operator of Lear Jet N211MB. BASS is in the business of leasing various aircraft to persons and organizations which operate the aircraft throughout the United States including the State of Florida.

Upon information and belief, BASS, leased Lear Jet N211MB to persons and organizations residing and operating in the State of Florida, and leased and operated other aircraft in the State of Florida. Prior to March 3, 1980, BASS delivered Lear Jet N211MB into the custody of GLENN CHARLES MOYER with the knowledge that he would fly N211MB to various places within and without the United States of America including the State of Florida.

14. At all times material hereto, the Defendant, LEAR, designed, manufactured and sold Lear Jet N211MB.

15. At all times material hereto, the Defendant, GENERAL ELECTRIC, designed and manufactured the engines, Model No. CJ 610-6, which were installed on Lear Jet N211MB.

16. At all times material hereto, GLENN CHARLES MOYER was an agent, servant, employee or officer of TITANIC AIRCRAFT and TITANIC SALES and was acting within the scope of his authority and in furtherance of their interests.

17. That at all times material hereto, GLENN CHARLES MOYER controlled, operated and maintained Lear Jet N211MB as pilot-in-command with the expressed or implied permission of the Defendants, BASS, EXECUFLITE, TITANIC AIRCRAFT and TITANIC SALES.

18. On March 3, 1980, Lear Jet N211MB departed Miami International Airport, Miami, Florida, en route to Duvalier International Airport in Port-au-Prince, Haiti. RAFAEL HERNANDEZ was aboard the N211MB with the consent of the Defendants and was a foreseeable user of the aircraft. GLENN CHARLES MOYER was the pilot-in-command and at all times material was the sole manipulator of the

controls. While making its landing approach to the Duvalier International Airport, Lear Jet N211MB crashed into the mountains approximately thirteen (13) nautical miles north-northeast of Port-au-Prince, Haiti.

19. This crash caused the death of RAFAEL HERNANDEZ.

20. At all times material hereto, Lear Jet N211MB was a dangerous instrumentality.

21. The Defendants, and each of them, owe the duty of at least reasonable care to the Plaintiffs.

COUNT I

The Plaintiffs readopt and reallege Paragraphs 1 through 21.

22. The negligence and carelessness of GLENN CHARLES MOYER was the proximate cause, or in the alternative a contributing proximate cause, of the crash of Lear Jet N211MB in that GLENN CHARLES MOYER negligently and carelessly piloted, operated, commanded and controlled subject aircraft resulting in the crash which caused the death of RAFAEL HERNANDEZ.

WHEREFORE, Plaintiffs are entitled to recover their damages from LINDA MOYER as the Personal Representative of the Estate of GLENN CHARLES MOYER, and from BASS, EXECUFLITE, TITANIC AIRCRAFT and TITANIC SALES.

COUNT II

The Plaintiffs readopt and reallege Paragraphs 1 through 21.

23. That the Defendants, BASS, EXECUFLITE, GLENN CHARLES MOYER, TITANIC AIRCRAFT

and TITANIC SALES, negligently and carelessly failed to properly maintain, equip and repair the Lear Jet N211MB, and further negligently and carelessly failed to warn users of the aircraft such as RAFAEL HERNANDEZ of the dangerous and unairworthy condition of the Lear Jet N211MB. This negligence and carelessness was the proximate cause, or in the alternative a contributing proximate cause, of the crash of N211MB resulting in the death of RAFAEL HERNANDEZ.

WHEREFORE, Plaintiffs are entitled to recover their damages from BASS, EXECUFLITE, TITANIC AIRCRAFT, TITANIC SALES and LINDA MOYER as the Personal Representative of the Estate of GLENN CHARLES MOYER.

[Counts III, IV, V and VI and Paragraphs 21 Through 38 Relate Solely to Gates Lear Jet; Counts VII, VIII, IX and Paragraphs 39 Through 49 Relate Solely to General Electric]

COUNT X

Plaintiffs reallege and readopt Paragraphs 1 through 49 of the Complaint.

50. At all times material, the Defendants, LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased, BASS, EXECUFLITE, LEAR, GENERAL ELECTRIC, TITANIC AIRCRAFT and TITANIC SALES by virtue of the foregoing facts were guilty of wanton negligence and acted so recklessly as to evince a reckless disregard to the life of RAFAEL HERNANDEZ. This wanton and reckless negligence proximately contributed to the crash of N211MB and the death of RAFAEL HERNANDEZ. At all times material, these Defendants, acting through their agents,

servants and employees, were aware that such wanton negligence would cause the crash in question, but failed to take any steps to prevent such wanton negligence and reckless conduct from occurring.

51. The negligence of these Defendants showed a reckless indifference to rights and safety of RAFAEL HERNANDEZ and was wanton.

WHEREFORE, Plaintiffs are entitled to recover their punitive damages against LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased, BASS, EXECUFLITE, LEAR, GENERAL ELECTRIC, TITANIC AIRCRAFT and TITANIC SALES.

COUNT XI

The Plaintiffs readopt and reallege Paragraphs 1 through 49 of the Complaint.

52. The crash of N211MB was such an occurrence that in the ordinary course of events would not have happened had due care been exercised by GLENN CHARLES MOYER, BASS, EXECUFLITE, TITANIC AIRCRAFT, TITANIC SALES, LEAR and GENERAL ELECTRIC. At all times material hereto, N211MB and its parts were in the sole and exclusive control of these Defendants.

53. The negligence of these Defendants was the direct and proximate cause of the crash of N211MB resulting in the death of RAFAEL HERNANDEZ.

WHEREFORE, Plaintiffs are entitled to recover their damages against LINDA MOYER, as Personal Representatives of the Estate of GLENN CHARLES MOYER, Deceased, BASS, EXECUFLITE, LEAR, GENERAL

ELECTRIC, TITANIC AIRCRAFT and TITANIC SALES.

[Count XII and paragraph 54 relate solely to the defendant Insurance Company and Counts XIII through XVI relate to the individual claims of plaintiffs]

WHEREFORE, Plaintiffs, MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERANNDEZ; MARGARITA HERNANDEZ, Individually, AHIZA HERNANDEZ and STANLEY HERNANDEZ, demand judgments against the Defendants, LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased; BASS AVIATION, INC., EXECUFLITE, INC., GATES LEAR JET CORPORATION, THE GENERAL ELECTRIC COMPANY, TITANIC AIRCRAFT SALES CORPORATION, TITANIC AIRCRAFT SALES AND SERVICES, LTD. and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, jointly and severally for any and all damages to which they are entitled and to such other relief as the Court may deem just, and demand trial by jury.

DATED this 26th day of February 1982.

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By _____
THOMAS R. TROMPETER

IN THE
CIRCUIT COURT OF THE 11th JUDICIAL
CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA

Case No: 82 3725 (03)

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAPHAEL HERNANDEZ, deceased, MARGARITA HERNANDEZ, Individually, STANLEY HERNANDEZ and AHIZA HERNANDEZ,

Plaintiffs,

VS.

LINDA MOYER, *etc.*, *et al.*

Defendants

MOTION TO QUASH AND/OR ABATE AND/OR DISMISS COMPLAINT

COME NOW the Defendants, BASS AVIATION, INC., a Mississippi corporation (hereinafter referred to as "BASS")' and the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a New York corporation (hereinafter referred to as "INSURANCE COMPANY") by and through their undersigned attorneys, and specially appear to contest the jurisdiction of this Court over the person of the Defendants, and move this Court for the entry of an Order quashing and/or abating, and/or dismissing the Complaint for lack of jurisdiction over the person of the Defendants, insufficiency of process, insufficiency of service of process, failure to state a cause of action and failure to join an indispensable party, and as grounds therefore say as follows:

1. This Court lacks jurisdiction over the person of the Defendant, BASS AVIATION, INC., and lacks jurisdiction

over the person of the Defendant, "INSURANCE COMPANY", since the only jurisdictional allegations contained in the Complaint are rebutted by the affidavits of Philip W. Bass, President of "BASS" which have been heretofore filed with this Court in Case No: 82-1974 (09) and with the United States District Court for the Southern District of Florida in Cases No: 81-6028—CIV ALH and 81-6560 CIV NCR, copies of which are annexed hereto as Exhibits A, B and C respectively. These three cases arise out of the same factual circumstances and involve a number of the same parties.

2. There is an insufficiency of process and/or insufficiency of service of process; in that, the Plaintiff has failed to fully comply with Florida Statutes 48.19 and 48.161, and/or other allegedly applicable statutes for service of process on foreign corporations doing business in the State, and has further failed to allege sufficient factual allegations to justify service under those statutes which authorize substitute service, particularly in light of the fact that the jurisdictional allegations have been rebutted by the affidavits of Phillip W. Bass as is set forth above.

3. The Complaint fails to state a cause of action against "BASS" and hence against "INSURANCE COMPANY", its liability insurance carrier, in that, there are insufficient allegations of ultimate facts to show a relationship out of which a duty is implied by law and insufficient factual allegations to show the breach of any purported duty owed at law. 'Count II which addresses the alleged negligence of BASS AVIATION fails to contain any allegations of ultimate facts which would show negligence on the part of "BASS" but rather merely sets forth the legalistic and conclusory language of the pleader.

4. The Complaint fails to state a cause of action in Count XI, *res ipsa* loquitor, in that, it affirmatively avers an

alleges that at the time of the accident, the subject aircraft was in the sole and exclusive control of "these Defendants", when in fact the aircraft had been leased by "BASS" to TITANIC AIRCRAFT SALES & SERVICE, LTD., through its agent or servant, GLENN CHARLES MOYER, several days prior to the alleged accident, as is also evidenced by the affidavits of Phillip W. Bass and the lease agreement entered by the parties on February 29, 1980, a copy of which is attached hereto and marked as Exhibit "D" and therefore was in the sole control of either TITANIC AIRCRAFT SALES & SERVICE, LTD., GLENN CHARLES MOYER or RALPH HERNANDEZ at the time of the alleged crash.

5. The Complaint fails to adequately set forth a cause of action for wrongful death, in that, it fails to indicate the appropriate law to be applied in the circumstances and fails to indicate the law that the pleader perceives to be the appropriate law, and is therefore vague, ambiguous and incapable of a response.

6. The Complaint fails to state a cause of action for punitive damages in Count X, because the Complaint is utterly devoid of allegations of ultimate facts which would show that these Defendants have engaged in any activities which could be construed to be wanton negligence, or in a reckless disregard to the life of RAPHAEL HERNANDEZ; rather, Count X complains merely the legalistic and conclusory language of the pleader.

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JOHN R.W. PARSONS

DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

Case No. 83-366

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, Deceased, MARGARITA HERNANDEZ, Individually, STANLEY HERNANDEZ, AHIZA HERNANDEZ, GATES LEARJET CORPORATION, a foreign corporation and LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, Deceased,

Appellants,

-VS-

BASS AVIATION, INC., a foreign corporation; THE GENERAL ELECTRIC COMPANY, a foreign corporation; TITANIC AIRCRAFT SALES CORPORATION, a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees.

Brief of Appellant, Linda Moyer

STATEMENT OF THE CASE

Appellant adopts the Statement of the Case submitted by Co-Appellant GATES LEARJET and adds the following:

Prior to the hearing on BASS' motion to dismiss, Appellants deposed Phillip Bass, the President of BASS AVIATION, INC. Mr. Bass' deposition was filed of record prior

to the hearing and was relied upon by Appellants at the hearing (R. 152-333; A. 2-182).

STATEMENT OF THE FACTS

Appellant adopts the Statement of the Facts submitted by Co-Appellant GATES LEARJET and adds the following:

Phillip Bass, President of BASS AVIATION, INC., testified by deposition concerning the business activities of BASS AVIATION, INC., in Florida. BASS AVIATION advertised in Florida in a national aviation magazine called "The A/C Flyer" (R. 240, 241). The company placed these advertisements by phone calls to the A/C Flyer office in Fort Lauderdale, Florida. Payment for these ads was accomplished by returning payment with invoices sent from the Florida office (R. 240). BASS AVIATION maintained an air charter operation which, whose aircraft on various occasions stopped in Florida for fuel (R. 176). It leased an aircraft to International Jet Charter, a Florida entity located in Fort Lauderdale (R. 177-178). BASS also had dealings through a Florida resident, Mr. Shelton Mintzberg, with Marine Holdings, Limited, a Florida corporation (R. 178-179). In addition, BASS AVIATION had two aircraft leased to a Bill Tougas who was operating out of Fort Lauderdale, Florida (R. 181). BASS had a Florida resident employee, a Mr. Dennis Jaeger (R. 184).

As alleged in the Complaint and substantiated by the deposition of Mr. Bass, the aircraft which is the subject of this appeal was leased to GLENN CHARLES MOYER for the final fatal flight (R. 215-216). MOYER, a Florida resident, signed for the aircraft and received it as a representative of TITANIC AIRCRAFT SALES AND SERVICES, LTD. Moreover, the principals of TITANIC regularly conducted business in the State of Florida (R.

288-290). TITANIC was a corporation operating out of Florida (R. 289). The final flight was connected with BASS' Florida business. MOYER told Phillip Bass he was taking the Learjet N211MB To Denver, Colorado, picking up some people there, continuing to California, then going to Washington and New York, and then returning back to Florida (R. 293). The crash of this particular airplane under this particular lease gave rise to this action.

ARGUMENT

Appellant adopts the arguments raised in the Brief of Co-Appellant GATES LEARJET and adds the following to Point II of that argument:

B. The Trial Court Erred in Finding Insufficient Contacts in Bass Aviation's Business in Florida.

Because this accident occurred outside Florida, the operative portion of the jurisdictional statute is as follows:

> 48.193 *Acts subjecting persons to jurisdiction of courts of state*
>
> (1) Any person whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doings of any of the following:
>
> (a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state . . . §48.193(a) Fla.Stat. (1980).

The meaning of the phrase "operates, conducts, engages in, or carries on a business . . . venture" is amplified by the provisions of §48.181(3), Fla.Stat. (1980):

> (3) Any person, firm or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, jobbers, wholesalers or distributors to any person, firm or corporation in this state shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business venture in this state.

In *Buckingham* v. *Atlas Aircraft Corp.*, 343 So.2d 654 (Fla. 4th DCA 1977), this Court confronted the test for finding jurisdiction over an out-of-state aircraft dealer. This Court held that purchase of aircraft located in Florida and arrangements to ferry the aircraft out of Florida were sufficient to confer jurisdiction over a Colorado aircraft dealer, even where the accident occurred outside Florida. 343 So.2d at 656.

Recently this Court was called upon to weigh the jurisdictional standard for a component part supplier located outside this state. In *Phoenix Trimming, Inc.* v. *Mowday*, 1983 F.L.W. 1178, Case No. 82-2144 (Fla. 4th DCA, Opinion filed April 27, 1983), this Court cited with approval an extensive list of standards for weighing minimum contacts, quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286 (1980). The "affiliating circumstances" which this Court cites as substantiating sufficient minimum contacts are:

—carrying on business activities in the state;

—closing sales [or leases] or peforming services in the state;

—availing themselves of the privileges of the state's law;

—soliciting business either through salespersons or through advertising reasonably calculated to reach the state; or

—selling [or leasing] to customers in the state or indirectly seeking to serve the state's market. 1983 F.L.W. at 1178, citing 444 U.S. at 295.

The conduct of BASS AVIATION satisfied most, if not all, of the criteria cited above. BASS leased directly to Florida customers (R. 177-178, 181). BASS employed a Florida resident (R. 184). BASS paid for advertising in Florida through a Florida publisher (R. 241, 242). BASS was even told that the aircraft involved in this incident was destined to fly to Florida (R. 293). BASS maintained a WATS line designed to receive toll free calls from the Florida area, among others (R. 310).

Unlike *Woodson* and *Phoenix Trimming*, *supra*, there is no single random contact here with the State of Florida. There is a regular, consistent pattern of business activity in Florida conducted by BASS AVIATION. By dealing with a Florida resident (MOYER) and by having foreknowledge that the aircraft was bound for Florida, coupled with the fact that the crash actually occurred on a flight from Miami, Florida, BASS AVIATION's Florida activities were also directly related to the crash which is the subject of this suit.

To accept BASS AVIATION's position in this suit, one would have to conclude that out-of-state lessors of airplanes, automobiles, trucks or computers are immune from the jurisdiction of Florida's courts, even though they do business extensively in this state. The proposition is absurd.

BASS has attempted to claim by affidavit that it does not do business in Florida. This contention has been amply refuted by the deposition of Phillip Bass, President of BASS

AVIATION, INC. As in summary judgment hearings, a party should not be permitted to rebut its own deposition testimony by conclusory allegations in an affidavit. *See*, 30 Fla.Jur., *Summary Judgment* §21. The affidavit in this case was filed prior to the deposition, and the deposition retracts several of the sworn grounds on which BASS relied in contesting jurisdiction. A comparison of Phillip Bass' affidavit with his later deposition testimony discloses the following discrepancies, all of which should be controlled by the deposition:

Affidavit:

> Bass Aviation, Inc., does not now and has never had any officers, agents, employees, jobbers, wholesalers, or distributors in the State of Florida. (All affidavit citations refer to R. 109, 110).

Deposition:

> An employee resides in Florida (R. 184).

Affidavit:

> Bass Aviation, Inc., does not now and never has placed advertising in any publications in the State of Florida and has sent no direct mail or broadcast advertising into the State of Florida.

Deposition:

> Bass Aviation, Inc., has regularly advertised its aircraft through the *A/C Flyer*, a publication located in Florida and circulated in Florida whose accounts are payable in Florida (R. 240, 241).
>
> Bass Aviation, Inc., has a WATS line which receives incoming long distance calls toll free from Florida and other areas (R. 310).

Affidavit:

Bass Aviation, Inc., did not lease the aircraft which is the subject matter of the lawsuit, Gates Learjet, Model 25, Serial No. 059, Registration No. N211MB, to or from persons or organizations in the state of Florida, either directly or through agents, brokers, jobbers, wholesalers or distributor.

Deposition:

The individual who executed the lease agreement for the lessee was GLENN CHARLES MOYER, who was known by Phillip Bass to reside in Florida, who was known also to be a pilot based in Florida, and who disclosed to Phillip Bass that the aircraft was ultimately scheduled to be flown to Florida (R. 288-298).

Affidavit:

Bass Aviation, Inc., did not maintain, operate or navigate Gates Learjet Model 25, Serial No. 059, FAA Registration No. N211MB, in the State of Florida, although it is possible that the aircraft was occasionally operated over the airspace of the State of Florida. At the time of the alleged occurrence, Bass Aviation, Inc., had no products, material or things processed, serviced, or manufactured by it anywhere used or consumed within the State of Florida, in the ordinary course of commerce, trade, or use, whose use or consumption resulted in said injury.

Deposition:

Bass Aviation, Inc., had other similar aircraft on lease to Florida lessees at the time of this incident (R. 177-179) and knew this aircraft was intended to be flown to Florida (R. 288-298).

Affidavit:

> Glenn Charles Moyer departed Fairhope, Alabama, on or about February 29, 1980, for Denver, Colorado. He had no passengers on the aircraft when he departed; therefore, I assumed he was picking up passengers in Denver, Colorado. He told me that he was flying from Denver to Chicago and then to points in the northeast.

Deposition:

> GLENN CHARLES MOYER was known to Bass to be a Florida resident who intended ultimately to fly the aircraft to Florida after other preliminary stops (R. 288-298).

The trial court's finding of insufficient minimum contacts is a hybrid determination of fact and law, and as such the standard for appellate review is simple error. Appellant respectfully submits that there was no competent evidence in the record below by which the trial court could have found insufficient contacts; rather, the record is replete with the testimony of Appellee's president as to Appellee's extensive aircraft business activity in Florida.

CONCLUSION

Appellant respectfully submits that the trial court Order dismissing the Complaint against BASS AVIATION, INC., should be reversed and this cause remanded with instructions to permit the action to proceed on the merits against BASS. Alternatively, Appellant submits that the trial court's Order should be reversed and this cause remanded with instructions to permit further discovery on jurisdictional issues.

Respectfully submitted,

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BRIEF OF APPELLANT GATES LEAR JET CORPORATION TO THE DISTRICT COURT OF APPEAL

INTRODUCTION

Defendant/Appellant, Gates Learjet Corporation, will be referred to as it stands before this Court, as it stood before the trial court and as "Gates Learjet". Plaintiff/Appellant, Margarita Hernandez, as Personal Representative of the Estate of Rafael Hernandez, Deceased, Margarita Hernandez, Individually, Stanley Hernandez and Ahiza Hernandez, will be referred to as they stand before this Court, as they stood before the trial court and as "Hernandez". Defendant/Appellant, Linda Moyer, as Personal Representative of the Estate of Glenn Charles Moyer, Deceased, will be referred to as she stands before this Court, as she stood before the trial court and as "Moyer". Defendant/Appellee, Bass Aviation, Inc., will be referred to as it stands before this Court, as it stood before the trial court and as "Bass Aviation". Titanic Aircraft Sales Corporation is a nominal party to this appeal and will be referred to as "Titanic".

"R" refers to portions of the record on appeal.

Emphasis is added unless otherwise indicated.

STATEMENT OF THE CASE

This is an appeal from an Order dismissing plaintiff's claim against Bass Aviation, Inc. for lack of jurisdiction based on insufficient minimum contacts (R. 801).

This action arose out of the crash of a Learjet Model No. 25, FAA Registration N211MB, Serial No. 059 aircraft which occurred approximately 13 nautical miles north-northeast of Port-au-Prince, Haiti (R. 4). Both the pilot of

the aircraft, Glenn Charles Moyer, and the co-pilot, Rafael Hernandez, were killed (R. 4). Margarita Hernandez, as personal representative of the estate of Rafael Hernandez, on behalf of herself and Stanley and Ahiza Hernandez, brought suit against Linda Moyer, the personal representative of the estate of Glenn Charles Moyer, Bass Aviation, Inc., Execuflight, Inc., Gates Learjet Corporation, The General Electric Company, Titanic Aircraft Sales Corporation, Titanic Aircraft Sales and Services, Ltd., and the Insurance Company of the State of Pennsylvania (R. 1-16). Bass Aviation moved to quash and/or abate and/or dismiss the complaint for lack of jurisdiction over the person of the defendant, insufficiency of process, insufficiency of service of process, failure to state a cause of action and failure to join an indispensable party (R. 106-108). The trial court granted the motion and dismissed the claim against Bass Aviation on the ground of lack of personal jurisdiction and insufficient minimum contacts by Bass Aviation with the state of Florida (R. 801). A notice of appeal was filed by Plaintiff, Hernandez. Gates Learjet and Linda Moyer joined in the appeal.

STATEMENT OF THE FACTS

This action arises out of the crash of a Learjet Model No. 25, FAA Registration No. N211MB, Serial No. 059 aircraft which occurred approximately 13 nautical miles north-northeast of Port-au-Prince, Haiti (R. 4). The aircraft was manufactured by Gates Learjet Corporation and purchased by Execuflight, Inc. which sold the aircraft to Bass Aviation, Inc. (R. 3) Bass Aviation, in turn, leased Learjet N211MB to Titanic Aircraft Sales Corporation through its agent, Glenn Charles Moyer, a Florida resident (R. 201, 289). Titanic Aircraft Sales Corporation is a foreign corporation incorporated in the Bahamas and doing business in the state of Florida (R. 1, 3, 289, 290). Mr. Moyer represented

that he was renting the aircraft in order to fly to Denver, Colorado, to California, to Washington to New York and back to Florida (R. 293). After signing a lease agreement, Mr. Moyer and Mr. Hernandez piloted the aircraft which subsequently crashed against a mountainside in Haiti.

POINTS ON APPEAL

I.
WHETHER THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION WHERE JURISDICTIONAL DISCOVERY HAD NOT YET BEEN COMPLETED AND SUCH DISMISSAL WAS PREMATURE.

II.
WHETHER THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION WHERE SUFFICIENT CONSTITUTIONAL MINIMAL CONTACTS AND FLORIDA STATUTORY REQUIREMENTS WERE PRESENT.

ARGUMENT

POINT I.
THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION WHERE JURISDICTIONAL DISCOVERY HAD NOT YET BEEN COMPLETED AND SUCH DISMISSAL WAS PREMATURE.

Dismissal of Bass Aviation for lack of personal jurisdiction was premature as the sole discovery taken pertaining to jurisdiction was the deposition of Philip Bass. Bass has not responded to interrogatories or requests for production seeking information regarding the scope of its business in Florida. In addition, testimony from others such as Linda

Moyer, wife of the deceased pilot, Glenn Charles Moyer, may glean additional information regarding connexity.

Phillip Bass' deposition contains sworn testimony revealing the presence of constitutional minimum contacts between Bass Aviation and the state of Florida (R. 153-333, See Argument, Point II, infra). At the very least, this deposition, which contradicts the affidavit in support of plaintiff's motion to dismiss, raises questions that should be answered before the lower court dismisses this defendant for lack of personal jurisdiction.

Bass Aviation remains a defendant in other actions in which discovery is proceeding (R. 106).

POINT II.
THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION WHERE SUFFICIENT CONSTITUTIONAL MINIMAL CONTACTS AND FLORIDA STATUTORY REQUIREMENTS WERE PRESENT

The trial court's Order dismissing Bass Aviation, Inc. was predicated on lack of personal jurisdiction over the defendant due to insufficient minimum contacts. This determination was erroneous for the following reasons: (1) Plaintiff sufficiently alleged facts in her complaint to initially support long arm jurisdiction, and (2) Plaintiff presented evidence rebutting Bass' affidavit. The pertinenparagraph in the complaint is as follows:

> (13) Upon information and belief, Bass leased Learjet N211MB to persons and organizations residing and operating in the state of Florida, and leased and operated other aircraft in the state of Florida. Prior to March 3, 1980, Bass delivered Learjet N211MB into the custody of Glenn Charles Moyer with the knowl-

edge that he would fly N211MB to various places within and without the United States of America including the state of Florida.

The constitutional requirement of minimum contacts between a defendant and the forum state has its genesis in the landmark case of *International Shoe Company v. State of Washington*, 326 U.S. 310, 90 L.Ed 95, 66 S.Ct. 154 (1945) in which the Court promulgated the standard by which jurisdiction predicated on extra-territorial service is measured. The Court there held that due process only requires a corporate or other defendant to have such minimum contacts with the forum state such that the maintenance of the suit would not offend traditional notions of fair play and substantial justice. It must be reasonable to require the defendant to defend the particular action in the forum state. *See World-Wide Volkswagen Corp. v. Woodson*, 440 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).

Florida has elected not to extend its long-arm jurisdiction to the limits of jurisdiction available to it under the federal constitution and has enacted statutes which require more activities or contacts with Florida than are required by constitutional due process standards. *See Shoei Safety Helmet Corp. v. Conlee*, 409 So.2d 39 (Fla. 4th DCA 1982); *Youngblood v. Citrus Association of the New York Cotton Exchange*, 276 So.2d 505 (Fla. 4th DCA), *Cert. denied*, 285 So.2d 26 (Fla. 1973). The long-arm statute and statute providing for service on a nonresident engaged in business in the state are drawn so that compliance with the Florida requirements will more than satisfy the due process requirements of due process.[1] *Dublin Company v. Peninsular*

[1]The Third District has recently observed that federal decisions reaffirming the need for minimum contacts and recent Florida decisions greatly expanding those acts for which long-arm jurisdiction will lie have brought Florida and federal practice closer in line. *April Industries, Inc. v. Levy*, 411 So.2d 303 (Fla. 3d DCA 1982).

Supply Co., 309 So.2d 207 (Fla. 4th DCA 1975).

Section 48.181, Florida Statutes (1981) provides the method of service of process on nonresidents engaging in business in Florida as follows:

> 48.181 Service on nonresident engaging in business in state.—
>
> (1) The acceptance by any person or persons, individually, or associated together as a copartnership or any other form or type of association, who are residents of any other state or country, and all foreign corporations, and any person who subsequently becomes a nonresident of the state or conceals his whereabouts, of the privilege extended by law to nonresidents and others to operate, conduct, engage in, or carry on a business or business venture in the state, or to have an office or agency in the state, constitutes an appointment by the persons and foreign corporations of the secretary of State of the state as their agent on whom all process in any action or proceeding against them, or any of them, arising out of any transaction or operation connected with or incidental to the business or business venture may be served. The acceptance of the privilege is signification of the agreement of the persons and foreign corporations that the process against them which is so served is of the same validity as if served personally on the persons or foreign corporations.
>
> (2) If a foreign corporation has a resident agent or officer in the state, process shall be served on the resident agent or officer.
>
> (3) Any person, firm or corporation which sells, consigns, or leases by any means whatsoever tangible or intangible personal property, through brokers, job-

bers, wholesalers, or distributors to any person, firm or corporation in this state shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business venture in this state.

Section 48.193, Florida Statutes (1981) delineates the acts subjecting persons or corporations to jurisdiction of the Court of this state and provides:

48.193 Acts subjecting persons to jurisdiction of courts of state.—

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:

(a) Operates, conducts, engages in, or carries on a business or business venture in this state or has an office or agency in this state.

(b) Commits a tortious act within this state.

(c) Owns, uses or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of

the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state jury; or this section may be made by personally serving the process upon the defendant outside this state, as provided in section 48.194. The service shall have the same effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on the other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner or hereinafter provided by law.

Both of these statutes have been construed as requiring the principle of "connexity". Section 48.181(1) provides for service on the Secretary of State in *any action or proceeding arising out of any transaction or operation connected with or incidental to the business or business venture.* Decisions concerning what constitutes doing business under section 48.181 also apply to section 48.193(1)(a). *Orange Motors of Coral Gables, Inc. v. Rueben H. Donnelley Corp.*, 415 So.2d 892 (Fla. 3d DCA 1982). Thus, the cause of action must arise out of the alleged activities of Bass Aviation within the state of Florida. Jurisdiction depends on the quality of Bass Aviation's "doing business" in Florida and the relationship between that business and the accident giving rise to this cause of action.

The quality and nature of Bass Aviation's contacts with the state of Florida certainly support the assertion of Florida's jurisdiction over it. Hernandez has stated sufficient facts in the complaint to support a reasonable inference that the defendant can be subjected to jurisdiction within the state. Bass Aviation's sole challenge to plaintiff's jurisdictional facts is a selfserving affidavit authored by Phillip Bass, president of Bass Aviation. This affidavit is contradicted by Mr. Bass' own sworn testimony taken by deposition which plaintiff filed with the court to carry her burden of substantiating (by opposing affidavit, testimony or documents) material facts supporting her allegations which justify service of process under the long-arm statute. *See McLean v. Church of Scientology of California*, 538 F.Supp 545 (M.D. Fla. 1982); *Dico Co. v. Meekins, Inc.*, 407 So.2d 1067 (Fla. 4th DCA 1981).

Philip Bass' deposition clearly establishes the requisite constitutional minimum contacts and satisfies Florida's "connexity" requirements. Mr. Bass testified as to numerous activities engaged in by Bass Aviation in Florida. Bass Aviation advertised in Florida in a national aviation magazine called "The A/C Flyer" (R. 240, 412). The company placed these advertisements by phone calls to the A/C Flyer office in Fort Lauderdale, Florida. Payment for these ads was accomplished by returning payment with invoices sent from the Florida office (R. 240). Bass Aviation maintained an air charter operation which, on various occasions, stopped in Florida for fuel (R. 176). It leased an aircraft to International Jet Charter, a Florida entity located in Fort Lauderdale (R. 177-178). Bass also had dealings through a Florida resident, Mr. Shelton Mintzberg, with Marine Holdings Limited, a Florida corporation (R. 178-179). In addition, Bass Aviation had two aircraft leased to a Bill Tougas which were operating out of Fort Lauderdale, Florida (R. 181). Bass had a Florida resident employee, a Mr. Dennis Jaeger (R. 184).

As alleged in the complaint and substantiated by the deposition of Mr. Bass, the aircraft which is the subject of this appeal was leased to Glenn Charles Moyer for the final fatal flight (R. 215-216). Moyer, a Florida resident, signed for the aircraft and received it as a representative of Titanic Aircraft Sales and Service, Limited. Moreover, the principals of Titanic regularly conducted business in the state of Florida (R. 288-290). Titanic was a corporation operating out of Florida (R. 289). The final flight was connected with Bass' Florida business as Moyer told Phillip Bass he was taking the Learjet N211MB to Denver, Colorado, picking up some people there, continuing to California, then going to Washington and New York, and then returning back to

Florida (R. 293). The crash of this particular airplane gave rise to this action.

Doing business in Florida as a predicate for jurisdiction does not require a direct presence or direct activity within the border of Florida. *Ford Motor Company v. Atwood Vacuum Machine Co.*, 392 So.2d 1305 (Fla. 1981). The inquiry rather is into the nature of the defendant's activities in the state. Continuous and systematic activities indirectly through others may provide a reasonable basis. *Id.* If the sale of a product is not simply an isolated occurrence but arises from the efforts of a manufacturer or distributor to serve the market in the state, it is reasonable to subject that corporation to suit in one of those states. *World-Wide Volkswagen Corp. v. Woodson, supra.* In *Atwood,* Ford Motor Company, defendant in a products liability action, brought a third party complaint against Atwood an Illinois corporation, alleging that Atwood manufactured the Ford door hinge assembly which allegedly caused the injury. The Florida Supreme Court examined Florida jurisdiction over Atwood within a "reasonableness" framework, and stated:

> The inquiry into whether there are 'minimum contacts' between the forum state and a nonresident business enterprise must look at the nature of the defendant's activities in the state. Continuous and systematic activities provide a reasonable basis for the assertion of jurisdiction.

392 So.2d at 1310.

Even one contact with a forum state may serve as the basis for asserting in personum jurisdiction. *Lacy v. Force V Corp.*, 403 So.2d 1050 (Fla. 1st DCA 1981). The *Lacy* court examined United States Supreme Court decisions including *International Shoe* and *World-Wide Volkswagen Corp. v. Woodson, supra* and concluded that the Court had never

held that one contact would preclude assertion of personal jurisdiction over the out-of-state defendant. The *Lacy* court also concluded that the Florida Supreme Court's *Atwood* decision implicitly recognizes that a single isolated transaction does not offend due process.

The Fourth District recently addressed the connexity requirements of the long-arm statute in *Shoei Safety Helmet Corp. v. Conlee, supra.* The precise issue was whether there must be connexity to the specific object involved in the cause of action or whether the connexity can be to the general activity of the manufacturer in the state. The court concluded that the manufacturer was engaged in the business of promoting and soliciting sales in Florida and was therefore, amenable to Florida's jurisdiction notwithstanding the fact that the specific helmet involved was manufactured and originally sold in Ohio rather than Florida.

In *Sanchez v. Laribee Machine Co.*, 409 So.2d 1064 (Fla. 3d DCA 1981), *pet. for review denied*, 417 So.2d 329 (Fla. 1982), the court held that a corporate defendant having no presence or contacts within Florida, neither owning nor leasing property in Florida, conducting no business in Florida through brokers or others, having no office nor phone listing, making no deliveries nor solicitation of business, and having not previously availed itself of the privilege of carrying on business activities in Florida, was nevertheless, subject to service of process under the Florida long-arm statutes. The court found that the manual accompanying the machine purchased from the company contained a full page advertisement of that machine and invited the purchaser to write or phone for more information on the company's complete line. This evidence, the court declared; "when viewed in the light of *Ford Motor Company v. Atwood Vacuum Machine Co.*, 392 So.2d 1305 (Fla.), clearly shows that its

actions and conduct made it amenable to service of process under the Florida long-arm statutes". *Id*, at 1066.

The *Sanchez* contacts are analogous to the case at bar. In fact, Bass Aviation's contacts with Florida are more extensive than those of Laribee Machine Company. Not only did Bass Aviation advertise in Florida, it leased numerous aircraft to Florida entities. Its advertising was designed to achieve sales or leases of Learjets in Florida and in the endeavor, was obviously successful. Bass Aviation did, indeed, conduct business in the state of Florida. It is entirely reasonable to expect a corporation advertising in Florida and leasing planes to Florida residents to be used in Florida, to defend an action brought by a Florida resident, in Florida.

CONCLUSION

Based on the foregoing legal argument and authorities, Gates Learjet Corporation respectfully submits that the trial court's dismissal of Bass Aviation, Inc. for lack of personal jurisdiction based in insufficient minimum contacts should be reversed.

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BY: _____
CAROLYN PICKARD

IN THE
DISTRICT COURT OF APPEAL,
FOURTH DISTRICT OF FLORIDA

Case No. 83-366

MARGARITA HERNANDEZ, as Personal Representative of the Estate of RAFAEL HERNANDEZ, JR., deceased; MARGARITA HERNANDEZ, individually; STANLEY HERNANDEZ; AHIZA HERNANDEZ; GATES LEARJET CORP., a foreign corporation; and LINDA MOYER, as Personal Representative of the Estate of GLENN CHARLES MOYER, deceased,

Appellants,

v.

BASS AVIATION, INC., a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees/Petitioners.

NOTICE OF INVOKING DISCRETIONARY JURISDICTION

NOTICE is hereby given that BASS AVIATION, INC., and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Petitioners, invoke the certiorari jurisdiction of the Supreme Court to review the decision of this Court filed July 11, 1984, motion to rehear denied in an order of this Court filed August 21, 1984.

The Petitioners invoke the jurisdiction of the Supreme Court as the said decision and order of this Court present conflict with: *Lacy v. Force V Corporation*, 403 So.2d 1050 (Fla. 1st DCA 1981); *General Tire & Rubber Co. v. Hickory Springs Manufacturing Co.*, 388 So.2d 264 (Fla. 5th DCA

1980); *American Baseball Cap, Inc. v. Duzinski*, 359 So.2d 483 (Fla. 1st DCA 1978); *Joyce Brothers Storage and Van Company v. Piechalak*, 343 So.2d 97 (Fla. 3d DCA 1977); *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S.Ct. 559, 62 L.ED. 2d 490 (1980); Helicopteros Nacionales de Colombia v. Hall, 104 S.Ct. 1868 (1984); *International Shoe Company v. Washington*, 326 U.S. 310, 66 S.Ct. 154, 90 L.ED. 95 (1945); *Shoei Safety Helmet Corp. v. Conlee*, 409 So.2d 39 (Fla. 4th DCA 1981), *reh.* 1982; *Derrick Waverly Moo Young v. Air Canada and Venezolana International de Aviacion*, 9 Fla. L.W. 519 (Fla. 4th DCA 1984); *Phoenix Trimming, Inc. v. Lois C. Mowday*, 8 Fla. L.W. 1178 (Fla. 4th DCA 1983).

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 19th day of September, 1984, to all counsel on the attached service list.

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BY: _____
DONNA S. CATOE

BASS AVIATION, INC.
FAIRHOPE MUNICIPAL AIRPORT
P.O. Box 925
Fairhope, Alabama
(205) 928-1230

February 29, 1980

Lease Agreement entered into this date between Bass Aviation, Fairhope, Alabama, and *Titanic Aircraft Sales & Service, LTD* a one week 7 day lease on Lear Jet N211MB Serial 059. It is agreed that the advance sum of $10,000 will be paid up front based on a guaranteed 20 hour usage at $500.00 per hour. Any hours in excess of 20 hours will be at the standard rate of $500.00 per hour. Bass Aviation will provide insurance and *Titanic Aircraft Sales & Service LTD* will provide fuel; crew and maintenance for the duration of the lease. Should the aircraft be damaged to the point it has to be taken out of service for repair, then *Titanic Aircraft Sales and Service, LTD* agrees to make monthly payments to the bank until the aircraft is returned from repair and into service. This sum should not exceed $26,000 per month. This lease should be governed under the laws of the State of Alabama.

Charles Moyer

Phillip W. Bass
President

Attested to by _____
upon delivery of aircraft

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction on the equal protection of the laws.

Florida's long-arm statute Section 48.193, Florida Statutes (1983) provides:

> 48.193 Acts subjecting persons to jurisdiction of courts of state.—
>
> (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits that person and, if he is a natural person, his personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following:
>
> (a) Operates, conducts, engages in, or carries on a business venture in this state or has an office or agency in this state.
>
> (b) Commits a tortious act within this state.
>
> (c) Owns, uses, or possesses any real property within this state.

(d) Contracts to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to proceedings for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintains a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causes injury to persons or property within this state arising out of an act or omission outside of this state by the defendant, provided that at the time of the injury either:

1. The defendant was engaged in solicitation or service activities within this state which resulted in such injury; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use, and the use or consumption resulted in the injury.

(g) Breaches a contract in this state by failing to perform acts required by the contract to be performed in this state.

(2) Service of process upon any person who is subject to the jurisdiction of the courts of this state as provided in this section may be made by personally

serving the process upon the defendant outside this state, as provided in s. 48.194. The service shall have the same effect as if it had been personally served within this state.

(3) Only causes of action arising from acts or omissions enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section, unless the defendant in his pleadings demands affirmative relief on other causes of action, in which event the plaintiff may assert any cause of action against the defendant, regardless of its basis, by amended pleadings pursuant to the rules of civil procedure.

(4) Nothing contained in this section shall limit or affect the right to serve any process in any other manner now or hereinafter provided by law.

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MAY 9 1985
ALEXANDER L. STEVAS,
CLERK

NO. 84-1599

in the

Supreme Court

of the

United States

BASS AVIATION, INC.,

Petitioner,

vs.

MARGARITA HERNANDEZ, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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BEST AVAILABLE COPY

QUESTION PRESENTED FOR REVIEW

Whether the exercise alternatively of specific jurisdiction or general jurisdiction by Florida courts over a nonresident corporation which sold and leased aircraft in Florida, advertised and solicited aircraft business regularly in Florida, and leased the particular aircraft involved in this suit to a Florida lessee, following which a crash occurred in Haiti while the aircraft was en route from Florida to Haiti, satisfies constitutional due process standards for a cause of action against the corporation arising from the alleged negligent maintenance of the aircraft, negligent failure to warn of its unairworthy condition, and vicarious liability as lessor of the dangerous instrumentality.

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No. 84-1599

in the Supreme Court of the United States

BASS AVIATION, INC.,
Petitioner,

vs.

MARGARITA HERNANDEZ, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent Linda Moyer (hereinafter Moyer) respectfully submits that the Petition for a Writ of Certiorari should be denied.

SUPPLEMENTAL STATEMENT OF THE CASE

In addition to the contacts described in the Petition of Bass Aviation, Inc. (hereinafter Bass), Bass maintained a toll-free WATS telephone line for incoming business calls from Florida. (Pet. App. 28a).

Among its Florida dealings Bass conveyed two jet aircraft through a 10-year lease/purchase agreement to Bill Tougas, a Florida resident who operated out of Fort Lauderdale. (Pet. App. 24a).

Dealing through a Florida resident, Shelton Mintzberg, Bass sold a jet aircraft to Marine Holdings Ltd., a Florida corporation. That aircraft was delivered by Bass in Florida to its customer and operated in Florida under Bass' Part 135 Air Taxi Operators and Commercial Operators Certificate issued by the Federal Aviation Administration. (Pet. App. 4a, 5a). Under a Part 135 Certificate, the certificate holder (Bass) retains operational control of its aircraft and retains a non-delegable duty to assure the proper maintenance of its aircraft regardless of the aircraft's whereabouts. The provisions of 14 C.F.R. §§135.77, 135.413 are included in the Appendix at App. 1.

Bass began its jet lease/charter operation in 1976. According to Bass' President, "[I]n '78—about '78 we

were the price-setters in the Lear Jet market, and we probably moved as many or more than anyone in the country, really." (App. 2, 3). Obtaining that prominence in the national Lear Jet market occurred as a result of handling a total of about thirty Lear Jets from 1976 through mid-1980. (App. 2, 3).

Bass advertised regularly in the "A/C Flyer" from 1977 through the time of the accident in 1980. The nationwide advertisements placed by Bass in the "A/C Flyer" were arranged by phone calls made to the "A/C Flyer" office in Fort Lauderdale, Florida, and Bass made payment on invoices submitted from and payable to the "A/C Flyer" in Florida. (Pet. App. 24a, 28a).

The lease agreement for the flight in question included a choice of law clause, but the lease contained no agreement as to choice of forum in the event of suit and contained no territorial restriction as to where the leased Lear Jet could be operated. (Pet. App. 48a). The lease was for a term of one week and provided for a cash payment of $10,000.00 in advance. (Pet. App. 48a).

At the time that the pilot Charles Moyer picked up the plane, Bass also gave him a proposed long-term lease agreement for the aircraft, which Charles Moyer was to deliver to his employer for review and possible signature. (App. 3, 4). Charles Moyer's employer operated aircraft principally out of Florida and the Bahamas. (Pet. App. 4a).

Moyer disputes Bass' conclusory statement that the cause of action arose in Haiti and that the cause of action did not arise out of or relate to any conduct of Bass in Florida. These causes of action for wrongful

death arise alternatively from Bass' failure to maintain the aircraft, Bass' continuing breach of a duty to warn the crew of its unairworthiness, and Bass' continuing liability as lessor of the dangerous instrumentality, all of which caused injury to Florida resident survivors of Florida resident decedents. (Pet. App. 12a, 13a, 16a, 17a).

SUMMARY OF ARGUMENT

The decision below was consistent with the body of law describing the sufficient minimum contacts necessary to support either general or specific jurisdiction over a nonresident defendant. There is no question of law that warrants a grant of certiorari.

ARGUMENT

The decision below was rendered in accord with a well-settled body of law derived from the rule that suit may be maintained against a nonresident defendant if the defendant has certain minimum contacts with the forum and the maintenance of the suit does not offend "traditional notions of fair play and substantial justice", *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

Moyer and Hernandez have relied extensively upon assertion both of specific and general jurisdiction below. As demonstrated by the numerous relevant contacts of Bass in Florida, there is no justiciable issue as to its voluntary submission to the jurisdiction of Florida courts, both in the extent of its general business contacts and in relation to the leasing of the subject aircraft for use in Florida.

A. Contacts Between Bass and the Forum

Bass was engaged in the business of selling, chartering and leasing corporate jet aircraft, particularly Lear Jets such as the one involved in this accident. The leasing and sale of Lear Jets is not the sort of volume business which exists in the instance of leasing automobiles, for example, but the lease or sale of a single Lear Jet may be a highly lucrative transaction. The one week lease involved in this case required a minimum payment of $10,000.00. It may fairly be said that a $10,000.00 rental fee for a one week lease involves a substantial transaction. Bass' president testified that they were the "price-setters" in the Lear Jet market, and that they handled as many or more Lear Jets as anyone in the country during 1978. Even so, Bass handled only approximately thirty Lear Jets between 1976 and mid-1980. Even a single transaction in Bass' business of selling and leasing corporate jets had a major impact in this highly priced, limited market.

Bass served the Florida corporate jet lease market extensively. It advertised aircraft regularly in the "A/C Flyer", a monthly nationwide advertising publication printed in Florida. Bass placed its ads through the "A/C Flyer's" business office in Ft. Lauderdale, Florida, and Bass paid the "A/C Flyer's" billing invoices at Ft. Lauderdale, Florida. Bass also maintained a toll-free WATS telephone line for incoming business calls from Florida. As a result of Bass' efforts to penetrate the Florida jet aircraft market, it had leased jet aircraft on prior occasions which were piloted by the decedent Charles Moyer, whom Bass knew to be a Florida resident piloting principally in Florida and the Bahamas.

Bass had entered into a 10-year lease/purchase of two jet aircraft with a Florida resident. Bass had permitted another Florida purchaser to operate an aircraft under Bass' Part 135 Air Taxi Operators and Commercial Operators Certificate issued by the Federal Aviation Administration. Under 14 C.F.R. §§ 135.77, 135.413, Bass was required to retain operational control of that aircraft and Bass was required to retain a non-delegable duty to assure proper maintenance of that aircraft, even while it was used in Florida by the Florida purchaser. Bass had delivered that aircraft in Florida to its Florida customer.

Bass' principal place of business in Fairhope, Alabama, was so close geographically to Florida that one of Bass' employees lived in Florida and commuted to work at Bass.

In its air charter operations, in which Bass furnished pilots and fuel, aircraft owned by Bass had flown to Florida carrying Bass' customers, and Bass had purchased fuel in Florida for its aircraft while there.

B. Specific Jurisdiction

The facts of this case fall within those anticipated by the Court in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). In that case, the defendant distributors sold only to customers in New York, New Jersey and Connecticut. In distinguishing that limited activity from the distribution of the product in the forum State, Oklahoma, the Court stated:

> Hence, if the sale of the product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other states, it is not unreasonable to subect it to suit in one of those states if its allegedly defective merchandise has there been the source of injury to its owner or others. The forum State does not exceed its powers under the due process clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State. Compare *Gray v. American Radiator and Standard Sanitary Corporation*, 22 Ill.2d 432, 176 N.E.2d 761 (1961).

444 U.S. at 297, 298. Although this crash did not occur within Florida, the incident occurred while the aircraft was still en route from Miami to Port-au-Prince, Haiti, and the mere fortuity of the location of the crash in this instance should do nothing to alter the rule set forth in *World-Wide Volkswagen Corp.* above.

The inquiry into whether a foreign corporation is subject to the jurisdiction of the forum State focuses upon the relationship among the defendants, the forum and the litigation. *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). In this instance, Bass leased the aircraft in the custody of a Florida resident pilot, Charles Moyer, knowing that he was going to fly the aircraft to Florida, and the crash occurred while the aircraft was being flown from Florida. The decedents Charles Moyer and

Rafael Hernandez and their survivors are all Florida residents. The relationship of the defendant, the forum and the litigation all dictate that the contacts of this defendant be sufficient.

The fundamental rule set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), has been satisfied in this action. In *International Shoe*, the Court stated:

> To the extent that a corporation exercises the privilege of conducting activities within a State, it enjoys the benefits and protection of the laws of that State. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the State, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue.

326 U.S. at 319. Bass leased a dangerous instrumentality with the foreknowledge that it would be flown to Florida by a Florida resident crew. The pleadings below averred that Bass (1) negligently maintained the aircraft; (2) negligently failed to warn the decedent crew members of its unairworthy condition; and (3) was vicariously liable as owner of the dangerous instrumentality for the negligence claimed by each crew member against the other. Although transitory torts may be frowned upon for some purposes, the wrongful acts in (1) and (2) above, occurred in Florida as well as elsewhere, and the liability claimed in (3) arose during the flight from Florida prior to arrival at the aircraft's scheduled

destination. An assertion of specific jurisdiction is proper under these circumstances.

C. General Jurisdiction

Even if this crash is assumed neither to have arisen out of or be related to Bass' Florida contacts, jurisdiction is proper. It is not required that a cause of action arise out of a defendant's business transactions in the forum State. *Perkins v. Benguet Mining Co.*, 342 U.S. 437 (1952).

If the cause of action does not arise out of or relate to the defendant's activities in the forum State, then there must be shown continuous and systematic business contacts. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 104 S.Ct. 1868 (1984).

Bass was involved in regular, monthly advertisements published by a Florida magazine and intended to reach Florida. Bass maintained a toll-free WATS telephone line for incoming business calls from Florida. Bass had leased jet aircraft to the decedent Charles Moyer's employer for use in Florida on prior occasions. Bass had chartered aircraft for flights to Florida, for which Bass had purchased aircraft fuel in Florida. Bass had entered into a ten year lease/ purchase of two jet aircraft with a Florida customer. Bass permitted a buyer to operate in Florida under Bass' own Part 135 Air Taxi Operators and Commercial Operators Certificate issued by the Federal Aviation Administration, under which Bass retained operational control of the aircraft and a non-delegable duty to assure the maintenance of that aircraft, even while that aircraft was located in Florida. Bass had delivered that aircraft in Florida to

its customer. The business of leasing, selling and chartering multi-million dollar corporate jet aircraft is not so mundane or common an enterprise that these extensive dealings in Florida may be characterized as merely incidental. Bass sought to penetrate the market for corporate jet aircraft in Florida and did so in a continuous and systematic way.

Recent rulings of the Court have addressed directly whether the defendant challenging jurisdiction had contact with the forum State by soliciting business in the forum State or by seeking to serve its market. See, e.g., *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 104 S.Ct. 1868, 1871 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 289, 295 (1980). This type of contact is of paramount importance, because it reflects directly whether the Defendant may reasonably be assumed to have availed itself of the privilege of doing business in the forum State and thus may reasonably expect to be haled into court in that State. *Calder v. Jones*, 104 S.Ct. 1482, 1487 (1984); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 297; *Kulko v. Superior Court*, 436 U.S. 84, 97-98 (1978): *Shaffer v. Heitner*, 433 U.S., at 216; *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Bass avidly sought business in Florida, and having successfully obtained it, cannot reasonably be heard to complain that its constitutional rights have been denied.

CONCLUSION

Respondent respectfully submits that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

MICHAEL K. McLEMORE
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Dated: May 7, 1985

CERTIFICATE OF SERVICE

I, Michael K. McLemore, being over the age of 18 years, and a member of the law firm of Kimbrell & Hamann, P.A., hereby certify that I have this seventh day of May, 1985, served three copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari to the Fourth District Court of Appeal of Florida and upon the following parties by mailing same to their attorneys of record in sealed envelopes, first class postage prepaid, deposited at the United States Postal Service Mailbox located at 799 Brickell Plaza, Miami, Florida: THOMAS J. WHALEN, ESQ., Counsel for Petitioner, BASS AVIATION, INC., 1100 15th Street, N.W., Suite 300, Washington, D.C. 20005; THOMAS R. TROMPETER, Casuso & Trompeter, Attorneys for MARGARITA HERNANDEZ, 7900 S.W. 57th Avenue, Suite 22, South Miami, FL 33143; LOUISE H. McMURRAY, Daniels and Hicks, P.A., 1414 duPont Building, 169 E. Flagler Street, Miami, FL 33131; and EDWARD R. CURTIS, 3104 South Andrews Avenue, Ft. Lauderdale, FL 33316 (Co-Counsel for Linda Moyer); JOHN M. MURRAY, Thornton, David & Murray, P.A., Attorneys for GATES LEARJET CORP. Suite 210, Ingraham Building, 25 S.E. Second Avenue, Miami, FL 33131; JOHN R.W. PARSONS, Peters, Pickle, Flynn, Niemoeller, and Downs, Attorneys for THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, 628 Ingraham Building, 25 S.E. Second Avenue, Miami, FL 33131; and JOANNE M. ROSE, Squires, Sanders & Dempsey, Attorneys for Margarita Hernandez, 3000 Miami Center, 100 Chopin Plaza, Miami, Fla. 33131.

/s/ Michael K. McLemore

MICHAEL K. McLEMORE, Esq.

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14 C.F.R. §135.77

* * *

§ 135.77 Responsibility for operational control.

Each certificate holder is responsible for operational control and shall list, in the manual required by §135.21, the name and title of each person authorized by it to exercise operational control.

* * *

14 C.F.R. §135.413

§ 135.413 Responsibility for airworthiness.

(a) Each certificate holder is primarily responsible for the airworthiness of its aircraft, including airframes, aircraft engines, propellers, rotors, appliances, and parts, and shall have its aircraft maintained under this chapter, and shall have defects repaired between required maintenance under Part 43 of this chapter.

(b) Each certificate holder who maintains its aircraft under §135.441(a)(2) shall—

(1) Perform the maintenance, preventive maintenance, and alteration of its aircraft, including airframe, aircraft engines, propellers, rotors, appliances, emergency equipment and parts, under its manual and this chapter; or

(2) Make arrangements with another person for the performance of maintenance, preventive maintenance, or alteration. However, the certificate holder shall ensure that any maintenance, preventive maintenance, or alteration that is performed by another person is performed under the certificate holder's manual and this chapter.

* * *

Excerpts of Deposition of Phillip W. Bass, taken November 22, 1982, which appears in record below at pp: 153-332.

Deposition, p. 101, l.1 (R.253):

* * *

Q How many Lear Jets pass through the portals of Bass Aviation?

A God, I would have to guess without any records.

Q Don't guess. But give me an educated guess or an estimate, if you're able to.

A Some we never even took possession of. Some we made a commitment to buy and the next day they were gone. I'd say maybe fifteen, twenty Lear Jets.

Q That's from July '76 until what, the present?

A Oh, no. In '77. Maybe '77 that many. One year.

We were told that we had basically one of the in '78—about '78 we were the price-setters in the Lear Jet market, and we probably moved as many or more than anyone in the country, really.

Q Okay. Let me see if I can clarify my original question a little bit. From the time that you began your business until the present time, how many Lear Jets, to the best of your knowledge, had you had any dealings with either on a sales basis or a lease basis?

MR. PARSONS: I don't want you to guess. If you can give some reasonable figure based on your knowledge, that's fine. But don't guess.

A Thirty, I guess, as best as I can estimate.

* * *

Deposition, p. 146, l.16 (R.198):

* * *

Q With regard to the long-form written lease that's Exhibit 16, was that lease ever signed by anyone?

A That lease was given to Mr. Moyer just prior to his departure from Fairhope. It was given to him on the basis—at further discussion he said, "We're going to probably sell the 65 and we may need the aircraft for a longer period of time."

I said, "Okay. If we're going to do that, take the long form, the financials. Let's get it all filled out, put it

on record so we can look at some long term on the aircraft.

Q In any event, the long form document on number 16 was a working document that was to be further reviewed and decided?

A He said that he did not have the authority to enter into a long-term agreement like this without his attorney looking at it, and I said, "Fine," and he was going to bring it back the next week as he came through Alabama.

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MAY 15 1985
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CLERK

No. 84-1599 (3)

In The
Supreme Court of the United States
October Term, 1984

BASS AVIATION, INC.,
Petitioner,

vs.

MARGARITA HERNANDEZ, etc., et al.,
Respondents.

On Petition For a Writ of Certiorari to the Fourth District Court of Appeal of Florida

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI BY RESPONDENTS MARGARITA HERNANDEZ, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF RAFAEL HERNANDEZ, JR., DECEASED; MARGARITA HERNANDEZ, INDIVIDUALLY; STANLEY HERNANDEZ; AND AHIZA HERNANDEZ

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RESTATED QUESTION PRESENTED FOR REVIEW

Whether the exercise of personal jurisdiction by Florida courts over a nonresident corporate lessor of a Lear Jet which crashed in Haiti during a flight originating in Florida killing two Florida residents, satisfies federal constitutional due process standards for suits against the corporation arising out of the alleged negligent maintenance of the aircraft, negligent failure to warn of its unairworthy condition, and vicarious liability as lessor of a dangerous instrumentality, where the nonresident corporation: (a) had repeatedly leased the same or identical aircraft to the same Florida lessee on prior occasions; (b) leased the particular aircraft involved in this suit to a Florida lessee with the knowledge that it would be flown to Florida; (c) sold, leased and operated aircraft in Florida; (d) allowed Florida businesses to operate leased aircraft under its FAA Part 135 Operating Certificate; (e) and regularly advertised and solicited business in Florida.

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Respondents.

On Petition For a Writ of Certiorari to the Fourth District Court of Appeal of Florida

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI BY RESPONDENTS MARGARITA HERNANDEZ, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF RAFAEL HERNANDEZ, JR., DECEASED; MARGARITA HERNANDEZ, INDIVIDUALLY; STANLEY HERNANDEZ; AND AHIZA HERNANDEZ

The Respondents, MARGARITA HERNANDEZ, as Personal Representative of the Estate of Rafael Hernandez, Jr., Deceased; MARGARITA HERNANDEZ, Individually; STANLEY HERNANDEZ; and AHIZA HERNANDEZ, (hereafter "HERNANDEZ"), respectfully request that this Court deny the Petition for Writ of Certiorari, which seeks review of the decision of the Fourth District Court of Appeal of the State of Florida in this

cause. That opinion is reported at *Hernandez v. Bass Aviation,* 453 So.2d 447 (Fla. 4th DCA 1984). The dismissal of the Petition for Writ of Certiorari to the Florida Supreme Court from the decision by the Fourth District Court of Appeal for the State of Florida is unreported.

SUPPLEMENTAL STATEMENT OF THE CASE

Respondents, HERNANDEZ, adopt the Brief of Respondent MOYER in this cause. In addition to the facts and matters described in the Petition of BASS AVIATION, INC. and the Brief in Opposition by MOYER, Respondents, HERNANDEZ, set forth the following additional matters.

BASS AVIATION, INC. was engaged in a commercial aircraft charter business conducted under Part 135 of the Federal Aviation Regulations and in the leasing of airplanes to others. BASS AVIATION, INC. conducted charter operations under its 135 Certificate throughout the United States including activities in Florida, Puerto Rico, France, Germany, and Canada. (App. 6)

BASS AVIATION had a long term business relationship with International Jet Charter (a Florida business) and its president, Bill Tougas, a Florida resident. BASS AVIATION, INC. understood that aircraft leased to International Jet Charter and Bill Tougas were to be "located principally in the State of Florida". BASS AVIATION, INC. and Bill Tougas entered into a ten (10) year aircraft lease agreement on September 20, 1979 and on January

13, 1980 they drafted a five (5) year lease agreement. During the period May 23, 1979 through November 15, 1979 BASS AVIATION, INC. charged International Jet Charter over $124,130.00. (App. 8)

BASS AVIATION, INC. also had extensive dealings with Marine Holdings, Ltd., a Florida corporation operating out of Fort Lauderdale, Florida. The chief pilot for BASS AVIATION, INC. was the pilot for Marine Holdings, Ltd., operating out of Fort Lauderdale, Florida. The proposed sale of a Lear Jet to Marine Holdings, Ltd. was negotiated in Florida. Marine Holdings, Ltd., operated a Lear Jet on April 1-2, 1980 for flights originating in Fort Lauderdale and terminating in Fort Lauderdale, Florida for which BASS AVIATION, INC. charged $6,447.28. (App. 8).

Prior to the February 29, 1980 least (App. 3) of Lear Jet N211MB which crashed during the lease period and resulted in this case, BASS AVIATION, INC. had three prior leases of aircraft to the same Florida entities,[1] all of which and were negotiated and effected by Charles Moyer, the pilot and a Florida resident. These leases occurred on June 2, 1979, for a lease of Lear Jet 83JM (App. 1); a lease on October 22, 1979 to Titanic Aircraft Sales and Service, Ltd. of Lear Jet N102PA (App. 1-2) and a lease on October 29, 1979 to Titanic Aircraft Sales and Service, Ltd. of Lear Jet N211MB (App. 2).

Subsequent to the jurisdictional decision below, there have been further proceedings affecting the viability of

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[1] The written "leases" were in the name of Titanic Aircraft Sales and Service, Ltd., and Air Montana (corrected to Air Montez) (a Florida lessee).

this appeal. Co-Plaintiff Moyer, in a separate Federal case, obtained a Final Judgment against defendant, EXECUFLITE, INC., in March of 1982. (App. 26-27). HERNANDEZ also has defaults on liability against EXECUFLITE, INC. On April 4, 1985, the Florida trial court in the instant case granted partial final summary judgment in favor of Moyer against the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, finding coverage for EXECUFLITE, INC., and coverage for the earlier Federal court judgment. (App. 23-25).

SUMMARY OF ARGUMENT

1. The decision below properly applied the Florida Long Arm Statutes to the jurisdictional question and accurately found that there were sufficient minimum contacts with Florida by BASS AVIATION, INC. so that it could reasonably except to be haled into court in Florida regarding the aircraft accident in question without violating federal due process.

2. The decision below is not sufficiently final to warrant certiorari by this Court. There has been no trial on the merits but only a preliminary jurisdictional ruling. At the trial on the merits, BASS AVIATION, INC., may prevail, or judgment may be entered on an adequate independent state ground, or judgment may be effected against a different defendant; all of which would render the present issue moot.

REASONS WHY THE WRIT SHOULD BE DENIED

A. The Florida Court Applied The Proper Legal Jurisdictional Standards To The Facts And Reached A Correct Result.

The present decision is fully in accord with the decisions that have addressed the question of the minimum jurisdictional contacts necessary to meet federal due process requirements. Petitioner alleges that the decision of the Florida appellate court is in conflict with the decision of this Court in *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980).[2] Rather, the Florida court found that the complaint and proof met the jurisdictional test established by this Court:

> "Unquestionably the single most important factor to be considered is whether 'the defendant's conduct and connection with the forum . . . are such that he should reasonably anticipate being haled into court there . . .' *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. at 297, 100 S.Ct. at 567, 62 L.Ed.2d at 501. It is essential that this circumstance be considered from the perspective of the defendant—not from that of the plaintiff. See *Shaffer v. Heitner,* 433 U.S. 186, 201, 97 S. Ct. 2569, 2580, 43 L.Ed.2d 683 (1977). The reasonable foreseeability factor is frequently applied to force a non-resident defendant to answer a suit within the forum if it 'purposefully avails itself of the privilege of conducting activities within the forum . . .' *Hanson v. Denckla,* 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958)."

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[2] Nor is the decision of the Florida District Court of Appeal in conflict with this Court's decision in *Hanson v. Denckla,* 357 U.S. 235, 78 S. Ct. 1228, 2 L.Ed.2d 1283 (1958), since the Petitioner purposely availed itself of the privilege of conducting activity in Florida.

Hernandez v. Bass, 453 So.2d 447, (Fla. 4th DCA 1984). (Pet. App. 2a-3a).

From the totality of the factual record before it, including the 180 page deposition of the President of BASS AVIATION, INC., the Florida court listed several specific contacts with Florida that were particularly relevant to the jurisdictional inquiry. These were: (a) advertising in 1979 and 1980 in Florida pursuant to a written agreement with A/C Flyer, whose office was in Miami; (b) lease agreements with Florida corporations, including a lease agreement with a Florida corporation involving the aircraft in question; (c) correspondence and invoices directed to Fort Lauderdale, Florida, from Petitioner; (d) Petitioner's president was aware that the aircraft would be flown to Florida; and further, (e) the FAA Part 135 Certificate held by Petitioner, was used by Florida entities who were renting or leasing aircraft from BASS.

In addition to the items specified in the opinion below, the record is replete with contacts that Petitioner had with the forum State to justify the exercise of personal jurisdiction over the non-resident defendant. In its Petition, BASS AVIATION admits that it delivered a leased aircraft into Florida. (Pet. App. 5). By entering into leases with Florida residents with the knowledge that the aircraft which were the subjects of the leases would be operated in Florida, and by advertising in Florida, BASS AVIATION purposely availed itself of the privilege of doing business in Florida. See *Mississippi Interstate Express, Inc. v. Transpo, Inc.,* 681 F.2d 1003, 1008 (5th Cir. 1982); *In-Flight Devices Corporation v. Van Dusen Air, Inc.,* 466 F.2d 220 (6th Cir. 1972).

Further, Petitioner's contacts with Florida are connected with the cause of action. The cause of action is based on the crash of Lear Jet N211MB. This Lear Jet was leased by BASS AVIATION to TITANIC AIRCRAFT SALES & SERVICES, LTD., a corporation with its principal place of business in Florida, and Petitioner knew the aircraft would be flown in Florida during the lease. (Pet. App. 4). The death of the Plaintiffs' decedent occurred during a flight which originated in Florida and terminated in the crash.

These repeated and continuous business dealings with at least three different Florida entities, repeated prior dealings with the lessee in question, and the Florida residencies of the decedents and their heirs,[3] along with all the other facts, establish personal jurisdiction both for general jurisdiction and for specific jurisdiction over Petitioner.

The record, including the briefs before the Florida appellate court, establish that BASS AVIATION, INC. made hundreds of thousands of dollars as a result of its leases of aircraft to Florida entities and the operation of aircraft in and out of Florida airports. Under the circumstances of this case, it cannot be said that the exercise of personal jurisdiction over BASS AVIATION, INC., by the Florida courts offends traditional notions of fair play and substantial justice. This is the result reached by the

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[3] The plaintiffs' residence plays an important role, along with relations among the defendant, the forum, and the litigation in determining the propriety of State court jurisdiction. *Keeton v. Hustler Magazine, Inc.*, 104 S. Ct. 1473 (1984).

Florida appellate court applying established and accepted Federal and Florida due process standards.

B. Due To The Interlocutory Nature Of The Decision Below And In Light Of Subsequent Proceedings In The Trial Court, No Reason Exists For A Grant Of Certiorari.

The decision below was the reversal of the trial Court's dismissal with a remand to proceed to trial on the merits. The only issue considered by the appellate court was whether there were sufficient minimum contacts by BASS AVITION, INC. to subject it to personal jurisdiction by the Florida court. Had the trial court denied the motion to dismiss, there could be no appeal of that denial until the conclusion of the case on the merits. The same rationale is applicable to the decision by the Florida Fourth District Court of Appeal. Since it merely reinstates personal jurisdiction at the trial level, and therefore operates in effect as a denial of the motion to dismiss, there should be no further appeal pending a final outcome of the litigation on the merits.

Non final judgments remanding the case to the trial court for additional proceedings such as the present case are not a proper subject matter for certiorari absent exceptional reasons. *American Construction Co. v. Jacksonville, T. & K. R. Co.*, 149 U.S. 372. The lack of finality is a sufficient ground for the denial of certiorari. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, *Brotherhood of Locomotive Firemen & Bangor & Arrostock R. R.*, 389 U.S. 327. This case does not present any important, novel, or clear cut legal issue important to state court jurisdiction. Rather, it concerns the routine

application of well recognized rules to a particular set of facts.[4]

In the instant case, it may never be necessary to reach the jurisdictional issue concerning BASS AVIATION, INC. Since the initial appeal of the jurisdiction over BASS AVIATION, INC., the Florida courts have made determinative rulings concerning liability of a codefendant, EXECUFLITE, INC., and insurance coverage for that defendant by the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA. Based upon a prior Federal court final judgment against EXECUFLITE, INC. (App. 23-25), the Florida trial court has entered a partial final summary judgment against the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA in the amount of the judgment against EXECUFLITE, INC. (App. 26-27). Therefore, recovery against this codefendant and payment of the damages will dispose of the entire case. As HERNANDEZ has identical claims in the same case against EXECUFLITE, INC. and the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, and has a default on liability against EXECUFLITE, INC., there is every likelihood that the HERNANDEZ claims may be resolved against EXECUFLITE, INC., and the INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA without proceeding further against Petitioner, BASS AVIATION, INC.

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[4] This case is distinguishable from *Land v. Dollar*, 330 U.S. 731, and *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682. Those cases raised important, clear cut, jurisdictional questions appropriate for resolution prior to a trial on the merits.

CONCLUSION

Respondents respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

THOMAS R. TROMPETER
Counsel for Respondents,
MARGARITA HERNANDEZ, as Personal Representative of the Estate of Rafael Hernandez, Jr., Deceased; MARGARITA HERNANDEZ, Individually; STANLEY HERNANDEZ; and AHIZA HERNANDEZ
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APPENDIX

Bass Aviation agrees to lease Learjet 25B (83JM) to Air Montez or Chuck Moyer for the period June 3rd (third) through June 10th (tenth). The rate will be $500 per hour (dry rate) with a minimum utilization of 25 (twenty-five) hours. Deposit of $8,500 was received by Milt Hobbs on June 2nd (second). The balance of $4,000 will be wire transferred to the Bass Aviation account on June 5th.

The aircraft is to be returned to Fairhope, Alabama in same condition as received on June 2nd by Lessee.

The aircraft is to be flown only by Mr. Chuck Moyer and Mr. Louis Ferriero.

Any damage to A/C lessee agrees to make A/C payments during repair not to exceed $25,000 per month. (A/C value 1.3 million.)

Signed,

/s/ Charlie Moyer
/s/ Milton Hobbs

October 22, 1979

Lease Agreement entered into this date between Bass Aviation and *Titanic Aircraft Sales & Service, LTD* a one week 7 day lease on Lear Jet N102PA Serial 224. It is agreed that the advance sum of $10,000.00 will be paid up front based on a guaranteed 20 hour usage at $500.00 per hour. Any hours in excess of 20 hours will be at the standard rate of $500.00 per hour. Bass Aviation will provide insurance and *Titanic Aircraft Sales & Service LTD* will provide fuel, crew and maintenance for the duration of the lease. Should the aircraft be damaged to the

point it has to be taken out of service for repair, then *Titanic Aircraft Sales and Service, LTD* agrees to make monthly payments to the bank until the aircraft is returned from repair and into service. This sum should not exceed $17,280.00 per month.

/s/ Charles Moyer /s/ Phillip W. Bass
President

Attested to by /s/ Ralph Hernandez, Jr.
upon delivery of aircraft

October 29, 1979

Lease Agreement entered into this date between Bass Aviation and Titanic Aircraft Sales, a two week lease on Sn59 N 211 MB. It is agreed that the advance sum of ———— will be paid up front based on a guaranted 33 hour usage at $500.00 per hour. Any hours in excess of 33 hours will be at the standard rate of $500.00 per hour. Bass Aviation will provide insurance and *Titanic Aircraft Sales* will provide fuel, crew and maintenance for the duration of the lease. Should the aircraft be damaged to the point it has to be taken out of service for repair, then *Titanic Aircraft Sales* agrees to make monthly payments to the bank until the aircraft is returned from repair and into service. This sum should not exceed $26,000 per month.

/s/ Charles Moyer /s/ Phillip W. Bass
President

February 29, 1980

Lease Agreement entered into this date between Bass Aviation, Fairhope, Alabama, and *Titanic Aircraft Sales & Service, LTD* a one week 7 day lease on Lear Jet N211MB Serial 059. It is agreed that the advance sum of $10,000 will be paid up front based on a guaranteed 20 hour usage at $500.00 per hour. Any hours in excess of 20 hours will be at the standard rate of $500.00 per hour. Bass Aviation will provide insurance and *Titanic Aircraft Sales & Service LTD* will provide fuel, crew and maintenance for the duration of the lease. Should the aircraft be damaged to the point it has to be taken out of service for repair, then *Titanic Aircraft Sales and Service, LTD* agrees to make monthly payments to the bank until the aircraft is returned from repair and into service. This sum should not exceed $26,000 per month. This lease shall be governed under the laws of the State of Alabama.

/s/ Charles Moyer

/s/ Phillip W. Bass
President

Attested to by .....
upon delivery of aircraft

DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

CASE NO: 83-366

MARGARITA HERNANDEZ, as personal representative of the estate of Rafael Hernandez, Jr., deceased; MARGARITA HERNANDEZ, individually; STANLEY HERNANDEZ; AHIZA HERNANDEZ; GATES LEARJET CORPORATION, a foreign corporation; and LINDA MOYER, as personal representative of the Estate of Glenn Charles Moyer, deceased,

Appellants,

vs.

BASS AVIATION, INC., a foreign corporation; TITANIC AIRCRAFT SALES CORPORATION, a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees.

BRIEF OF APPELLANTS, MARGARITA HERNANDEZ, STANLEY HERNANDEZ and AHIZA HERNANDEZ

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STATEMENT OF THE CASE

Appellant adopts the statement of the case submitted by co-appellants, GATES LEARJET and LINDA MOYER.

STATEMENT OF THE FACTS

Appellants adopt the statement of the facts submitted by co-appellants, GATES LEARJET and LINDA MOYER; and add only those additional items set forth in the text of brief and the appendix.

THE TRIAL COURT ERRED IN DISMISSING DEFENDANTS, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION.

Appellants adopt the arguments raised by co-appellants, GATES LEARJET and LINDA MOYER, in their briefs, and in addition present the following:

BASS AVIATION, INC., was engaged in a commercial aircraft charter business conducted under Part 135 of the Federal Aviation Regulations (R. 178-179). Also, BASS AVIATION, INC., leased airplanes to others. Part 135 operations requires the issuance of a certificate by the Federal Government to the operator in order to legally operate aircraft for hire. BASS AVIATION, INC., itself conducted charter operations under its 135 Certificate throughout the United States including activities in Florida; (R. 176-181) plus Puerto Rico, France, Germany, and Canada. (R. 320 & 230).

In addition to charter flights conducted by its own pilots under its Part 135 Certificate, BASS AVIATION, INC., allowed other entities to use *its* 135 Certificate

along with renting/leasing aircraft to them. This included International Jet Charter and Mr. Bill Tougas, as well as Marine Holdings, LTD., and Mr. Sheldon Mintzberg. (R. 194 & 178). It is unclear whether Charles Moyer and TITANIC AIRCRAFT SALES AND SERVICE LTD., were ever authorized to operate under BASS AVIATION, INC.'s 135 Certificate. The use of BASS AVIATION, INC.'s Part 135 Certificate by International Jet Charter and Marine Holdings was essential to these operations since they could have not been legally conducted otherwise. Therefore, the use of BASS AVIATION, INC.'s Part 135 Certificate for the activities of Marine Holdings, LTD., and International Jet Charter constituted a joint venture by these entities, and constituted BASS AVIATION, INC., doing business in the State of Florida. BASS AVIATION, INC., by allowing others to operate under its Part 135 Certificate necessarily became also engaged in and responsible for those business activities; since otherwise the requirements for a valid FAA certificate for such operations would be meaningless.

Independently, the business dealings between BASS AVIATION, INC., and Marine Holdings, LTD., International Jet Charter, Bill Tougas, TITANIC AIRCRAFT SALES AND SERVICE, LTD., and Chuck Moyer, all of which were Florida businesses, constituted doing business in Florida by BASS AVIATION, INC.

International Jet Charter was a Florida business and Bill Tougas a Florida resident, and the business was centered in Fort Lauderdale, Florida. This business relationship was on a long term basis. (R. 177-178). With respect to aircraft leased to International Jet Charter

and Bill Tougas, BASS AVIATION, INC., understood that the aircraft were to be "located principally in the State of Florida". (R. 309). BASS AVIATION, INC., and Bill Tougas entered into a ten (10) year aircraft lease agreement on September 20, 1979 (R. 395 & 410), and in January 13, 1980 International Jet Charter and William Tougas, individually drafted a five (5) year lease agreement. (R. 738-800 and Appendix A). Appendix B contains copies of the various invoices and correspondence relating to the business relationship between International Jet Charter and BASS AVIATION, INC. The ledger sheet covering the period May 23, 1979 through November 15, 1979 indicates that in that approximate six month period BASS AVIATION, INC., charged International Jet Charter over One Hundred Twenty Four Thousand One Hundred Thirty ($124,130.00) Dollars.

Marine Holdings, LTD., was a Florida corporation operating out of Fort Lauderdale International Airport. The chief pilot for BASS AVIATION, INC., was the pilot for Marine Holdings, LTD., operating out of Fort Lauderdale. (R. 178-179). Phillip Bass visited Sheldon Mintzberg in Florida to negotiate the proposed sale of a Learjet to Marine Holdings, LTD. (R. 244). Moreover, the invoice number 144 to Marine Holdings, LTD., indicates that a Learjet was operated on April 1 and 2, 1980 for flights originating in Fort Lauderdale and terminating in Fort Lauderdale, Florida for a total charge of Six Thousand Four Hundred Forty Seven Dollars and Twenty Eight ($6,447.28) Cents. (3R. 411).

In addition to the Florida entities of International Jet Charter and Marine Holdings, LTD., BASS AVIATION, INC., had repeated prior business dealings with

Charles Moyer and TITANIC AIRCRAFT SALES AND SERVICE, LTD. The first documented contact was on June 2, 1979. BASS AVIATION, INC., leased a Learjet to Chuck Moyer and Air Montana (corrected to Air Montez). It appears that this aircraft was delivered to Florida by Milt Hobbs, an employee of BASS AVIATION, INC. (R. 233, 459 & 460). The aircraft on this occasion was to be flown by Charles Moyer and also by Mr. Luis Ferriero, who is also known to be a resident of Fort Lauderdale, Florida. (R. 234). On October 22, 1979 BASS AVIATION, INC., leased a Learjet to Charles Moyer and TITANIC AIRCRAFT SALES AND SERVICE, LTD., for one week at a minimum charge of $10,000.00. TITANIC AIRCRAFT SALES AND SERVICE, LTD., was known to be operating out of the State of Florida. (R. 288, 289, 291, & 293). On October 29, 1979 BASS AVIATION, INC., again leased a Learjet to TITANIC AIRCRAFT SALES AND SERVICE, LTD., this time with a minimum guarantee of $16,500.00. Phillip Bass received two payments of Fifteen Thousand ($15,000.00) Dollars each, on October 31, 1983 and November 1, 1983 on behalf of TITANIC AIRCRAFT SALES AND SERVICE, LTD. All leases to TITANIC AIRCRAFT SALES AND SERVICE, LTD., were through Charles Moyer and by telephone, apparently to and from Florida. (R. 238-239). Upon completion of the leases, BASS AVIATION, INC., would provide an invoice to Charles Moyer to take back to Florida for subsequent payment. (R. 238). On February 29, 1980 BASS AVIATION, INC., again leased Learjet N211MB to TITANIC AIRCRAFT SALES AND SERVICE, LTD., and the person of Charles Moyer for a guaranteed $10,000.00 minimum charge. (R.

458). At the time of negotiating this lease Phillip Bass and Chuck Moyer discussed entering into a long term lease and a proposed written lease was given to Charles Moyer for review and with a view toward entering into a long term agreement. (R. 505, 519, 207, 299 & 300). BASS AVIATION, INC., leased Learjet N211MB *solely* to TITANIC AIRCRAFT SALES AND SERVICE, LTD., and Charles Moyer. (R. 215).

At the time Charles Moyer and Rafael Hernandez, Jr., received N211MB on February 29, 1980 to start the lease period which ended in the crash, Charles Moyer told Phillip Bass that the aircraft would be going back down to Florida. (R. 293). At that time Phillip Bass considered Florida a dangerous area for airplanes due to the high theft rate (R. 291); and in fact one of BASS AVIATION, INC.'s airplanes, while on charter, had been stolen in Florida. (R. 142). Therefore, BASS AVIATION, INC., at the time that N211MB was turned over to Charles Moyer on February 29, 1980 knew and expected that the aircraft would be operated in Florida during at least part of the lease period.

From June 1979 through the date of the accident BASS AVIATION, INC., repeatedly dealt with Charles Moyer and TITANIC AIRCRAFT SALES AND SERVICE, LTD., involving substantial sums of money for the lease of aircraft including N211MB. This was with the knowledge that Charles Moyer was a Florida resident, that TITANIC AIRCRAFT SALES AND SERVICE, LTD., had its principal place of business in Fort Lauderdale, Florida, and that the aircraft itself would be operated in Florida. Arrangements for these leases were made by various telephone calls between BASS AVIATION,

INC., and Chuck Moyer in Florida. Additionally, invoices were returned to Florida for payment of any balances due on the lease by TITANIC AIRCRAFT SALES AND SERVICE, LTD.

On March 3, 1980, N211MB, with Charles Moyer as pilot-in-command, departed Miami International Airport for Port-Au-Prince, Haiti. While on the landing approach to Port-Au-Prince, Haiti the aircraft crashed killing all persons aboard. (R. 4, 738-800/telegram of 3/4/80 also attached as Appendix C).

Florida Statutes § 48.181 and § 48.193 provide for personal jurisdiction over non-residents who operate, conduct, engage in or carry on a business or business venture in the state. The activities of BASS AVIATION, INC., meet the requirements of both statutes. By virtue of having allowed at least Marine Holdings, LTD. and International Jet Charter, and probably TITANIC AIRCRAFT SALES AND SERVICE, LTD., as well, to use its Part 135 Certificate BASS AVIATION, INC., was jointly engaged in business in Florida with these other entities. Alternatively, the repeated and continual business dealings involving the leasing of aircraft with International Jet Charter, Marine Holdings, LTD., TITANIC AIRCRAFT SALES AND SERVICE, LTD., and Charles Moyer, with the knowledge that the aircraft would be operated in Florida plus the advertising over a three (3) year period in Florida, along with the other contacts, constituted sufficient contacts of the same type to provide the Florida court jurisdiction for the crash of March 3, 1980. *Ford Motor Company v. Atwood Vacuum Machine Company*, 392 So.2d 1305 (Fla. 1981); and *Bucking-*

ham v. Atlas Aircraft Corp., 343 So.2d 654 (Fla. 4th DCA 1977).

For the lease which originated on February 29, 1980 and ended with the crash in question, BASS AVIATION, INC., knew that the aircraft would be "going back down to Florida" (R. 193) during the term of the lease. The flight which terminated in the crash originated from Miami International Airport. It can hardly be disputed that that leasing of N211MB for the period encompassing the fatal crash was the exact same type of activity for which BASS AVIATION, INC., was in business and was the same type of lease that had previously existed between BASS AVIATION, INC., and TITANIC AIRCRAFT SALES AND SERVICE, LTD., as well as International Jet Charter and Marine Holdings, LTD. *Shoei Safety Helmet Corp. v. Conlee,* 409 So.2d 39 (Fla. 4th DCA 1982).

Thus, BASS AVIATION, INC's activities involving Florida and involving the lease which terminted in the crash in question meet both the minimum contacts/doing business requirements of the Long Arm Statutes and the connexity requirements so as to confer jurisdiction on the Florida courts over the person of BASS AVIATION, INC. The trial court's finding of insufficient minimum contacts was error and should be reversed.

CONCLUSION

The trial court's order dismissing the complaint against BASS AVIATION, INC., should be reversed and this cause remanded with instructions to permit the action to proceed on the merits against BASS. Alternatively,

the trial court's order should be reversed and this cause remanded with instructions to permit further discovery on jurisdictional issues.

Respectfully submitted,

CASUSO & TROMPETER,
Attorneys for Appellants,
MARGARITA HERNANDEZ,
STANLEY HERNANDEZ, and
AHIZA HERNANDEZ

By: /s/ Thomas R. Trompeter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to: Michael K. McLemore, Esq., Suite 900, Brickell Centre, 799 Brickell Plaza, Miami, Florida 33131; Edward R. Curtis, Esq., 3104 South Andrews Avenue, Fort Lauderdale, Florida 33316; Roger G. Welcher, Esq., 25 West Flagler Street, Miami, Florida 33130; John R. W. Parsons, Esq., Suite 628 Ingraham Building, 25 S.E. 2d Avenue, Miami, Florida 33131; and Ralph Richard, Esq., Suite 210, Ingraham Building, 25 S.E. 2d Avenue, Miami, Florida 33131; this 20th day of June, 1983.

CASUSO & TROMPETER,
Attorneys for Appellants,
MARGARITA HERNANDEZ,
STANLEY HERNANDEZ, and
AHIZA HERNANDEZ

By: /s/ Thomas R. Trompeter

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT
STATE OF FLORIDA

CASE NO: 83-366

MARGARITA HERNANDEZ, as personal representative of the estate of Rafael Hernandez, Jr., deceased; MARGARITA HERNANDEZ, individually; STANLEY HERNANDEZ; AHIZA HERNANDEZ; GATES LEARJET CORP., a foreign corporation; and LINDA MOYER, as personal representative of the estate of Glenn Charles Moyer, deceased,

Appellants,

vs.

BASS AVIATION, INC., a foreign corporation; TITANIC AIRCRAFT SALES AND SERVICE, LTD., a foreign corporation; and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, a foreign corporation,

Appellees.

REPLY BRIEF OF APPELLANTS, MARGARITA HERNANDEZ, STANLEY HERNANDEZ, AND AHIZA HERNANDEZ

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Section 48.181, Fla. Stat. 4

THE TRIAL COURT ERRED IN DISMISSING DEFENDANT, BASS AVIATION, INC., FOR LACK OF PERSONAL JURISDICTION.

Appellees assert that BASS AVIATION, INC., did not purposefully avail itself of the privilege of conducting activities within Florida and that its admitted contacts with Florida were "very minimal". (Appellees brief pg. 6). Appellees further assert that "it cannot be seriously contended that these activities have any connection to the cause of action in this lawsuit". (Appellees brief pg. 6). This view of BASS AVIATION's relationship to and activities in Florida simply does not comport with the available facts. The facts establish the following connections with Florida and BASS AVIATION's aeronautical business activities:

1. BASS AVIATION was in the business of leasing aircraft, including lear jets, to others. These activities were not limited geographically and BASS AVIATION advertised in the AC Flyer which was distributed throughout the United states including the State of Florida. Further, their advertisements were placed in Florida and paid for in Florida.

2. The type of aircraft leased by BASS AVIATION, and particularly jet aircraft, were obviously not leased with the idea that they would be used solely within either the State of Alabama (BASS AVIATION's principal place of business) or the State of Mississippi (BASS AVIATION's State of incorporation). These aircraft were known by BASS AVIA-

TION to travel transcontinentally and inter-continentally on almost every lease.[1]

3. BASS AVIATION, INC., allowed two Florida businesses to utilize its Part 135 Federal Aviation Administration Certificate. These entities were International Jet Charter/Bill Tougas, and Marine Holdings, Ltd./Sheldon Mintzberg. Without the use of BASS AVIATION's certificate, these entities could not have conducted their aviation activities in Florida and elsewhere.

4. BASS AVIATION entered into a five year lease (1980 to 1985) with William Tougas. The lease provided for delivery at Fort Lauderdale, Florida and Mr. Tougas was known to be operating his company, International Jet Charter, out of Fort Lauderdale, Florida.

---

[1] Although addressing a manufacturer, the Florida Supreme Court's analysis is equally applicable to aviation activities which necessarily involve interstate activities. *Ford Motor Company v. Atwood Vacuum Machine Company*, 392 So.2d 1305 (1981):

> "If a manufacturer is responding to the opportunities created by the existence of an interstate or nationwide market, then the reasonableness of requiring it to defend an action, arising out of its business activity, in another state, is a question not entirely divorced from the substantive question of the manufacturer's liability for the consequences of defects. The manufacturer is the person in the best position to insure against such consequences, and it is less burdensome to require the manufacturer to defend in the state of the injured consumer's residence than to require the plaintiff to travel to the state of the manufacturer's domicile." At page 1312.

5. BASS AVIATION had numeous one time leases with Marine Holdings, Ltd., and International Jet Charter/ Bill Tougas, for the lease of aircraft from which BASS AVIATION gained hundreds of thousands of dollars. Both these companies were known by BASS AVIATION to have their principal operations in South Florida and that the aircraft would be operated in and out of Florida airports.

6. BASS AVIATION completed at least three leases with Charles Moyer/TITANTIC AIRCRAFT SALES AND SERVICE, LTD. and Air Montez (a predecessor of TITANIC) before the lease period when the crash in question occurred. Charles Moyer and these entities were known to be operating out of Fort Lauderdale, Florida. The aircraft on one occasion was delivered to Florida by BASS AVIATION, and BASS AVIATION received payment of substantial amounts of money for these leases.

7. The lease for the crash in question began on March 29, 1980 and was for an initial 5 day period. The aircraft was taken to Denver, Colorado; Vancouver, British Columbia; and back to Florida. It remained over night at Miami International Airport and then departed on March 3, 1980 for Port-au-Prince, Haiti. The passenger, Mr. Mowerman, had boarded the aircraft at Miami International Airport at the start of the first flight. Both the pilot and the co-pilot were residents of Florida.

The facts established that BASS AVIATION had deliberate, continuous, and systematic business dealings in the State of Florida involving the lease of aircraft. As the Supreme Court in *World-Wide Volkswagen v. Wood-*

son, 444 U.S. 286, 297, 100 S.Ct. 559, 567, addressed the *quid pro quo* for doing business in a state:

> "When a corporation "purposefully avails itself of the privilege of conducting activities within the forum state," . . . it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the state."

The activities by BASS AVIATION in Florida and with her citizens meet the requirements of operating, conducting, engaging in, or carrying on a business venture in the State of Florida under both Section 48.191, Fla. Stat. and Section 48.181, Fla. Stat. As the Florida Supreme Court stated in *Ford Motor Company v. Atwood Vacuum Machine Company,* 392 So.2d 1305, 1310 (Fla. 1981):

> "The inquiry into whether there are "minimum contacts" between the forum state and a nonresident business enterprise must look at the nature of the defendant's activities in the state. Continuous and systematic activities provide a reasonable basis for the assertion of jurisdiction."

BASS AVIATION knew that the aircraft it leased would be used throughout the United States as well as internationally as this was the very nature of its business. Certainly BASS AVIATION must have reasonably recognized that it would be potentially subject to jurisdiction in all the areas where its aircraft were operated. As the court in *Zirin v. Charles Pfizer and Company,* 128 So.2d 594, 599 (Fla. 1961):

> "In these days of jet airplanes and modern communications, it cannot be logically argued that the trial . . . away from home or principal place of business

> of the corporation imposes any undue hardship upon it. The courts of this state are always open to the use of such corporations to enforce obligations owed it by Florida citizens. There is no reason why . . . the courts of this state should not be available to its own citizens to enforce the obligations of the foreign corporation."

The main thrust of appellees argument seems to be that since the crash occurred in Haiti, rather than in Florida, there is no jurisdiction in Florida. (Appellees brief pg. 7). This is apparently a connexity argument. However, connexity is not so narrow a concept. Rather, it is a question of whether BASS AVIATION was doing the same type of business in Florida as the activity that gave rise to the wrongful death of the plaintiff. See *Kravitz v. Gebrueder Pletscher Druckgusswaremfabrik d/b/a Pletscher,* — So.2d —, 8 FLW 2594 (Fla. 3d DCA, October 25, 1983). The *Kravitz* decision adopted the rationale of *Shoei Safety Helmet Corporation v. Conlee,* 409 So.2d 39 (Fla. 4th DCA 1982), and held that where the defendant's activities in Florida were such that it was engaged in the same business in Florida as the business out of which the injuries arose, there is personal jurisdiction. There is no requirement that the personal injury occur in Florida. Here, the same aircraft leasing business that BASS AVIATION was engaged in throughout the United States, and with two other Florida entities, and on at least three prior occasions with TITANIC AIRCRAFT in Florida, is the *exact* same type of activity that was resulted in the lease of Lear Jet N211MB that was in effect at the time of the crash. The specific connections between the lease beginning February 29, 1980 and ending with the crash on March 3, 1980 to Florida are that

the flight originated from Miami International Airport, the pilot and co-pilot were Florida residents domiciled in Florida, the passenger was from Dade County, Florida, and the arrangements for the lease were made by TITANIC AIRCRAFT and Charles Moyer who were known and did in fact operate out of Ft. Lauderdale, Florida. In this instance, clearly Florida has a sufficient interest in its citizens and aviation activities conducted within its borders to assert jurisdiction over BASS AVIATION.

Additionally, the tial court dismissed the case without leave to develop further jurisdictional evidence. As can be seen from the supplemental pleadings filed by the parties, there has been significant additional discovery which has adduced many other contacts with Florida that go to the jurisdictional issue. Where, as here, the record is obviously incomplete, the dismissal should have been with leave to present additional facts on the issue of jurisdiction. See *Elmex Corporation v. Atlantic Federal Savings and Loan Association of Fort Lauderdale,* 325 So.2d 58 (Fla. 4th DCA 1976).

CONCLUSION

The trial court's order dismissing the complaint against BASS AVIATION, INC., should be reversed and this cause remanded with instructions to permit the action to proceed on the merits against BASS. Alternatively, the trial court's order should be reversed and this cause

remanded with instructions to permit further discovery on jurisdictional issues.

CASUSO & TROMPETER,
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MARGARITA HERNANDEZ,
AHIZA HERNANDEZ,

By: /s/ Thomas R. Trompeter

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing Reply Brief of Appellants, was mailed this 22nd day of December, 1983, to: Roger Welcher, Esq., GOODWIN, RYSKAMP, et al., 4th Floor, City National Bank Building, 25 West Flagler Street, Miami, Florida 33130; John R. W. Parsons, Esq., PETERS, PICKLE, FLYNN, ETC., 628 Ingraham Building, 25 S.E. 2nd Avenue, Miami, Florida 33131; Ralph P. Richard, Esq., THORNTON, DAVID & MURRAY, 210 Ingraham Building, 25 S.E. 2nd Avenue, Miami, Florida 33131; Edward R. Curtis, Esq., FERTIG & CURTIS, P.A., 3104 South Andrews Avenue, Fort Lauderdale, Florida 33316; and Michael K. McLemore, Esq., Suite 900, 799 Brickell Plaza, Miami, Florida 33131.

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STANLEY HERNANDEZ, and
AHIZA HERNANDEZ,

By: /s/ Thomas R. Trompeter

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT, IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO. 81-18129 DF
82-13317 DF

LINDA MOYER, et al.,
Plaintiffs,

-vs-

GATES LEARJET CORPORATION, et al.,
Defendants.

MARGARITA HERNANDEZ, et al.,
Plaintiffs,

-vs-

LINDA MOYER, et al.,
Defendants.

PARTIAL FINAL SUMMARY JUDGMENT

THIS CAUSE came before the Court on Monday, April 1, 1985, on motion by Plaintiff/Crossclaimant, LINDA MOYER, as Personal Representative of the Estate of Glenn Charles Moyer, deceased, (MOYER), for partial summary judgment against Defendant, INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, (ICSP), and having heard argument of counsel, having reviewed the file and discovery, and being fully advised in the premises, it is hereby,

ADJUDGED:

1. That there is no genuine issue of material fact and that MOYER is entitled as a matter of law to recover

against ICSP on Count XII of MOYER'S Amended Complaint, MOYER's count seeking satisfaction of an outstanding judgment against Execuflight, Inc., by ICSP.

2. The Court hereby also grants judgment in favor of MOYER and against ICSP on the Crossclaim of MOYER in Case No. 82-13317 DF, insofar as said Crossclaim seeks satisfaction of judgment against ICSP as set forth in paragraph 1, *supra*.

3. That LINDA MOYER, as Personal Representative of the Estate of Glenn Charles Moyer, deceased, 8651 N.W. 45th Street, Lauderhill, Florida, shall have and recover against INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA One Million One Hundred and Ninety-four Thousand, Six Hundred and Eighteen and Sixty/100 dollars ($1,194,618.60) with interest thereon at the rate of 12% from March 27, 1982, or the total sum of One Million Six Hundred and Twenty-eight Thousand and Two Hundred and Fourteen and Sixty/100 dollars ($1,628,-214.60), which sum shall bear interest at twelve percent per annum (12%) until satisfied, for which sum let execution issue.

4. Jurisdiction to tax costs as to MOYER's claim for coverage is hereby specifically reserved for later consideration by the Court.

5. Since damages claimed in Counts XIII and XIV are the same as contained in Count XII, Counts XIII and XIV are rendered moot by this order accordingly, Final Judgment is hereby entered.

DONE this 4 day of April, 1985, in Chambers at Fort Lauderdale, Broward County, Florida.

M. Daniel Futch, Jr.
CIRCUIT COURT JUDGE

Copies Furnished:
All counsel of record listed on the attached mailing list.

A TRUE COPY

IN THE UNITED STATES DISTRICT COURT
IN THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 81-6028-CIV-ALH

LINDA MOYER, etc., et al.,

Plaintiffs,

-vs-

BASS AVIATION, INC., etc., et al.,

Defendants.

FINAL JUDGMENT

This action came on for trial before the Court, Honorable C. William Kraft, Jr., Senior District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered on March 16, 1982, a copy of such decision is incorporated herein by reference.

Accordingly, it is hereby,

ORDERED AND ADJUDGED that final judgment be entered in favor of the Plaintiff, LINDA MOYER, as Personal Representative of the Estate of Glenn Charles Moyer, Deceased, and against the Defendant, EXECUFLIGHT, INC., in the amount of One million one hundred ninety-four thousand six hundred eighteen dollars and sixty cents ($1,194,618.60), with interest thereon at the rate of twelve percent (12%) as provided by law, for all of which sum let execution issue,

DONE AND ORDERED this 27th day of March, 1982, in Miami, Dade County, Florida.

Approved:

/s/ William Kraft, Jr.
Senior United States District Judge

Clerk of the United States District Court, Southern District of Florida

Copies Furinshed:
Edward R. Curtis, Esquire
Cecyl L. Pickle, Esquire

Office-Supreme Court, U.S.
FILED
MAY 24 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1599

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BASS AVIATION, INC.,

Petitioner,

v.

MARGARITA HERNANDEZ, *et al.*,

Respondents.

BRIEF OF PETITIONER IN REPLY TO BRIEF OF REPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

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No. 84-1599

IN THE

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BASS AVIATION, INC.,

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MARGARITA HERNANDEZ, *et al.*,

Respondents.

BRIEF OF PETITIONER IN REPLY TO BRIEF OF REPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Petitioner Bass Aviation, Inc. (Bass) hereby replies to the briefs in opposition filed by respondent Linda Moyer and the Hernandez respondents.

ARGUMENT

A. The Significant Facts Are Not in Dispute. The Essential Issue Which Arises from These Facts Which Bass Asks the Court to Review Is:

Whether Contacts with Florida Residents in Alabama Constitute Sufficient Connection with Florida and the Cause of Action Permitting the Exercise of Specific Jurisdiction.

The Supplemental Statements of Facts filed by respondents add some detail to petitioner's Statement of Facts.

Respondent's Statements do not, however, dispute the essential fact that Bass did business in Alabama with Florida residents, but had limited contacts with Florida itself; and the contacts Bass did have with Florida had no connection with the cause of action alleged against it.

The only actual contacts of Bass with Florida were: that Bass Aviation had a Part 135 Certificate and permitted two Florida residents, International Jet Charter and Marine Holdings, Ltd., in Florida, to operate Bass-leased aircraft under Bass' Part 135 Certificate; that Bass had conducted its own charter operations to several places in the United States, including Florida and had stopped for fuel in Florida on several occasions; that one of Bass' pilots went to Florida to deliver an aircraft for long-term lease to a Florida resident; and that Bass placed advertisements in A/C Flyer, a nationwide publication with offices in Florida, through which Bass placed the advertisement by telephone from Alabama.

These contacts with Florida, however, had no connection with the cause of action alleged in the case at bar.

These contacts evidence neither continuous nor permanent ties with Florida such as were present in *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). *See Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 104 S. Ct. 1868 (1984). Bass had neither offices nor maintenance bases nor employees working in Florida. None of the indicia or circumstances cited in *Perkins* (342 U.S. at 447-448) as a basis for the exercise of general jurisdiction are present in this case. Although respondents now claim that a basis for general jurisdiction exists, both respondents and Gates Lear Jet (a co-defendant in the trial court) claimed only specific jurisdiction in the court below under Florida long-arm statutes. *See* Brief of Respondents Hernandez, App. 4 - 22;[1] Brief of Petitioner, 23a-45a.

[1] The "alternative" basis for jurisdiction cited by respondents Hernandez related to a construction of the longarm statute of Florida by the Florida Supreme Court in *Ford Motor Co.* v. *Atwood Vacuum Machine Co.*, 392 So. 2d 1305 (Fla. 1981). Brief of Respondents Hernandez, App. 11 - 12.

Respondents' present argument that general jurisdiction exists has no basis in the undisputed facts found by the court below, and was not, in any event, raised by respondents or Gates Lear Jet in the court below.

Respondents do not dispute the fact that Bass did nothing in Florida which in any way related to the cause of action.[2] The aircraft involved was leased, delivered and maintained by Bass in Alabama. The accident occurred in Haiti.

Although the respondents disagree with petitioner as to the resolution of the issue, both respondents seem to agree that the issue before the Court is whether Bass' dealings in Alabama with Florida residents and Bass' knowledge that the subject aircraft would be taken to Florida were constitutionally cognizable contacts or connection

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[2] Respondent Moyer strains to bring some act of Bass into Florida which is connected with the cause of action. Respondent Moyer asserts:

> The pleadings below averred that Bass (1) negligently maintained the aircraft; (2) negligently failed to warn the decedent crew members of its unairworthy condition; and (3) was vicariously liable as owner of the dangerous instrumentality for the negligence claimed by each crew member against the other. Although transitory torts may be frowned upon for some purposes, the wrongful acts in (1) and (2) above, occurred in Florida as well as elsewhere, and the liability claimed in (3) arose during the flight from Florida prior to arrival at the aircraft's scheduled destination. An assertion of specific jurisdiction is proper under these circumstance.

Brief of Respondent Moyer, pp. 6-7.

Respondent Moyer may seem to be suggesting that Bass had an aircraft base or hangar in Florida to maintain the aircraft or lease the aircraft. This is absolutely not true, and Moyer is not asserting this as fact. Respondent Moyer is merely arguing that a duty to maintain and to warn follows the aircraft and since the aircraft was in Florida before the accident, Bass breached its duty there.

with Florida which related to the cause of action. *See* Brief of Hernandez Respondents, pp. 6-7; [3] Brief of Moyer, p. 6-7.[4]

Stated another way, were Bass' dealings in Alabama with Florida residents, such as Titanic and Moyer, acts "by which the defendant purposefully availed itself of the privilege of conducting activities within the forum state," (*Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958). *Accord*, *World-Wide Volkswagen Corporation* v. *Woodson*, 444 U.S. 286, 298 (1980)), and were such acts sufficiently connected with the cause of action brought against Bass based upon negligence?

Bass' dealings with Florida residents in Alabama had no connection with Florida itself. Titanic and Moyer sought

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[3] The Hernandez respondents claim: By entering into leases with Florida residents with the knowledge that the aircraft which were the subjects of the leases would be operated in Florida, and by advertising in Florida, BASS AVIATION purposely availed itself of the privilege of doing business in Florida. *See Mississippi Interstate Express, Inc.* v. *Transpo, Inc.*, 681 F.2d 1003, 1008 (5th Cir. 1982); *In-Flight Devices Corporation* v. *Van Dusen Air, Inc.*, 466 F.2d 220 (6th Cir. 1972).

> Further, Petitioner's contacts with Florida are connected with the cause of action. The cause of action is based on the crash of Lear Jet N211MB. This Lear Jet was leased by BASS AVIATION to TITANIC AIRCRAFT SALES & SERVICES, LTD., a corporation with its principal place of business in Florida and Petitioner knew the aircraft would be flown in Florida during the lease. (Pet. App. 4). The death of the Plaintiffs' decedent occurred during a flight which originated in Florida and terminated in the crash.

Brief of Respondents Hernandez, pp. 6-7.

[4] Respondent Moyer claims:

> The inquiry into whether a foreign corporation is subject to the jurisdiction of the forum State focuses upon the relationship among the defendants, the forum and the litigation. *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977). In this instance, Bass leased the aircraft in the custody of a Florida resident pilot, Charles Moyer, knowing that he was going to fly the aircraft to Florida, and the crash occurred while the aircraft was being flown from Florida. The decedents Charles Moyer and Rafael Hernandez and their survivors are all Florida residents. The relationship of the defendant, the forum and the litigation all dictate that the contacts of this defendant be sufficient.

Brief of Respondent Moyer, p. 6-7

out Bass in Alabama and negotiated and concluded a short-term lease there. The actions brought against Bass were not brought on the contract of lease. They were brought on the theory of negligence based on acts which, if they occurred at all, occurred in Alabama. The alleged acts of the defendant sued upon had no connection with Florida.

In finding specific jurisdiction over Bass based solely upon non-claim-related contacts between Bass and Florida residents in Alabama, the Court below rendered a decision contrary to the Court's holdings in *World-Wide Volkswagen* and its predecessors, and the recent decision of the Court in *Burger King Corporation v. Rudzewicz*, 53 U.S.L.W. 4541 (U.S. May 20, 1985).

In *Burger King*, the non-resident defendant had negotiated his franchise contract at least in part with Burger King officials in Miami by correspondence and telephone. The defendant had sought out and established a long-term business relationship with Burger King's Miami office and entered into a contract which not only provided that Florida law would control but also disclosed that suits concerning the agreement could be filed in Florida. The cause of action alleged against the defendant was based on the defendant's obligation to pay Burger King in Florida and the defendant's breach of that obligation.

The Court held that the defendant's dealings with the officials at the Miami headquarters of Burger King, his continuing contractual obligations to the Miami headquarters of the company and his acceptance of the provision that Florida law should control were purposeful acts by the defendant that "create a 'substantial connection' with the forum state." *Id.* at 4545.

In *Burger King* it was the defendant's purposeful activity with the forum's residents in the forum state (not outside the state, *see Travelers Health Ass'n. v. Virginia*, 339 U.S. 643 (1950)), which created the required "substantial connection" with the forum state. 53 U.S.L.W. at 4545. The breach of contract cause of action in *Burger King* arose out of or was related to "defendant's conduct and connection with the forum." *World-Wide Volkswagen*, 444 U.S. at 297.

In the case at bar, specific jurisdiction was found solely on the basis of a lease contracted in Alabama with Florida residents which had no connection with Florida other than the fact that Florida residents were involved, and which specifically provided that Alabama law was to control. The cause of action was not based upon a breach of that lease contract. It was based upon the alleged negligence of Bass in Alabama which allegedly resulted in an accident in Haiti.

Under *World-Wide Volkswagen* and *Burger King*, in order to obtain specific jurisdiction over the defendant, the defendant must do some purposeful act which is both connected to the cause of action and the forum state. Such a constitutionally required connection with Florida was absent in the case at bar.

B. The Jurisdictional Issue Before the Court is Important and the Ruling of the Court Below on that Issue is Final.

The Hernandez respondents argue that the issue presented for review is interlocutory and unnecessary to decide.

The issue of *in personam* jurisdiction comes to the Court from the Intermediate Court of Appeal of Florida in precisely the same posture as the *in personam* jurisdiction issue involved in *Calder* v. *Jones*, 104 S.Ct. 1482 (1984), came to the Court from the Intermediate Appellate Court in California. The Court stated in *Calder*:

> Although there has not yet been a trial on the merits in this case, the judgment of the California appellate court "is plainly final on the federal issue and is not subject to further review in the state courts." [cite] Accordingly, as in several past cases presenting jurisdictional issues in this posture, we conclude that the judgment below is final within the meaning of [28 U.S.C.] §1257. [cites]

104 S.Ct. at 1486 n.8.

On the issue of jurisdiction in this case, the judgment is final and ripe for review by the Court.

The Hernandez respondents suggest that inasmuch as a judgment has been obtained against a co-defendant, the

action may never proceed against Bass and, thus, the issue before the Court does not need to be decided. If, having obtained a judgment against a co-defendant, respondents dismissed their action against Bass with prejudice, petitioner Bass would agree that the issue Bass brings to the Court would be moot. However, the judgment debtor Insurance Company of Pennsylvania has appealed the judgment rendered against it on the issue of coverage. If reversed, respondents will be left with a default judgment against Execuflite, Inc., which has no assets and will have no insurance. In that event, respondents will be expected to press their claims against Bass in Florida and attempt to have Florida law rather than Alabama law apply to Bass' obligations and liabilities. The judgment against the co-defendant has no effect on the present petition.

CONCLUSION

For the foregoing reasons, and the reasons set forth in the Petition filed herein, petitioner urges that the Petition for a Writ of Certiorari be granted.

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Dated: May 24, 1985

CERTIFICATE OF SERVICE

I, Moffett B. Roller, being over the age of 18 years and a member of the law firm of Condon & Forsyth, hereby certify that I have, this twenty-fourth day of May, 1985, served three copies of the foregoing Reply upon the following parties, by mailing such copies to their attorneys of record in sealed envelopes, first class postage prepaid, deposited at the United States Post Office, located at North Capitol and Massachusetts Avenue, N.E., Washington, D.C.:

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